



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शुक्रवार, 11 दिसम्बर, 2015/20 अग्रहायण, 1937

हिमाचल प्रदेश सरकार

GENERAL ADMINISTRATION DEPARTMENT
SECTION-A

NOTIFICATION

Shimla-2, the 10th December, 2015

NO. GAD-A(B)8-4/2001-II.— The Governor, Himachal Pradesh is pleased to declare 1st January, 2016, 3rd January, 2016 and 5th January, 2016 as Public Holiday in Himachal Pradesh on account of general election of Panchayati Raj Institutions (in the areas of those PRIs where the

elections are scheduled to be held) on the respective dates (in case poll is held). All Government Offices, Boards, Corporations, Educational Institutions and Industrial Establishments situated in the Himachal Pradesh under Industrial Disputes Act and shops will remain closed on the said date in the areas of above Institutions. This will also be a paid holiday to daily wages employees and also within the meaning of Section 25 of Negotiable Instrument Act 1881.

It is, however, clarified that special casual leave may be given to those employees who are working in different places in the State but have a right to vote in above Panchayati Raj Institutions, on the production of certificate from the concerned Presiding Officer that the employee has actually cast his/ her vote.

By order,
Sd/-
Chief Secretary.

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla, the 28th November, 2015

No: Sharm (A) 6-2/2014 (Awards) D/Shala.— In exercise of the powers vested under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court D/Shala on the website of the Department of Labour & Employment Government of Himachal Pradesh:--

Sr. No.	Ref. No.	Petitioner	Respondent	Date of Award/Order
1.	63/14	Jagdish Chand	E.E.HPPWD, Joginder Nagar	03-10-2015
2.	50/14	Chuhar Singh	E.E.HPPWD, Joginder Nagar	03-10-2015
3.	61/14	Heema Devi	E.E.HPPWD, Joginder Nagar	03-10-2015
4.	121/14	Kaul Singh	E.E.HPPWD, Joginder Nagar	03-10-2015
5.	305/12	Bohari Devi	E.E.HPPWD, Dharampur	07-10-2015
6.	196/12	Sanjay Kumar	E.E.HPPWD, Joginder Nagar	07-10-2015
7.	46/13	Abhilashu	D.F.O. Suket	12-10-2015
8.	122/15	Babu Ram	E.E.HPPWD, Palampur	26-10-2015
9.	360/14	Balbir Singh	E.E.HPPWD, Joginder Nagar	26-10-2015
10.	104/14	Sonia	M.D.M/S Terrace Pharmaceuticals	27-10-2015
11.	105/14	Partap Singh	M.D. M/S Terrace Pharmaceuticals	27-10-2015
12.	171/13	Tej Ram	D.F.O. Mandi	27-10-2015
13.	21/14	Mehar Singh	E.E. HPPWD, Joginder Nagar	27-10-2015
14.	329/14	Machindra Devi	E.E. HPPWD, Joginder Nagar	27-10-2015
15.	331/14	Satya Devi	E.E. HPPWD, Joginder Nagar	27-10-2015
16.	332/14	Kala Devi	E.E. HPPWD, Joginder Nagar	27-10-2015
17.	357/14	Lata Devi	E.E. HPPWD, Joginder Nagar	27-10-2015
18.	358/14	Pritam Singh	E.E. HPPWD, Joginder Nagar	27-10-2015
19.	362/14	Kishori Lal	E.E. HPPWD, Joginder Nagar	27-10-2015
20.	369/14	Nek Ram	E.E. HPPWD, Joginder Nagar	27-10-2015
21.	377/14	Bimla Devi	E.E. HPPWD, Joginder Nagar	27-10-2015

22.	378/14	Babul Khan	E.E. HPPWD, Joginder Nagar	27-10-2015
23.	380/14	Rumla Devi	E.E. HPPWD, Joginder Nagar	27-10-2015
24.	381/14	Sheela Devi	E.E. HPPWD, Joginder Nagar	27-10-2015
25.	386/14	Dan Singh	E.E. HPPWD, Joginder Nagar	27-10-2015
26.	388/14	Dumnu Ram	E.E. HPPWD, Joginder Nagar	27-10-2015
27.	233/12	Dot Ram	A.D. Hydro	27-10-2015
28.	154/13	Roshan Lal	Conservator of Forest	29-10-2015
29.	365/14	Labh Singh	HPPWD, Joginder Nagar	31-10-2015
30.	382/14	Kamla Devi	HPPWD, Joginder Nagar	31-10-2015
31.	292/14	Satya Devi	HPPWD, Joginder Nagar	31-10-2015

By order,

Sd/-

Pr. Secretary (Lab. & Emp.).

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref: No. 63/ 2014

Sh. Jagdish Chand s/o Shri Damodar Dass, r/o Village Chowki Tramat, P.O.Tramat, Tehsil Joginder Nagar, District Mandi, H.P. ...Petitioner.

Versus

The Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P.

...Respondent.

03-10-2015

Present : Sh. Suresh Kumar Sharma, adv. csl. for the petitioner.
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Heard.

The case is fixed for evidence of petitioner. Ld. csl. for the petitioner has made statement that petitioner had not been contacting with me since far. As such, he does not want to proceed with this present claim petition/ reference and has prayed its dismissal. Statement recorded and placed on file. Accordingly, present reference is hereby dismissed as withdrawn.

2. Ordered accordingly. The parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication.
5. The file, after completion be consigned to the records.

Announced:

03.10.2015

(K.K.Sharma)

Presiding Judge,

Labour Court-cum-Industrial,

Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref: No. 50/ 2014

Sh. Chuhar Singh s/o Shri Mohan Singh, r/o Village Tharu, P.O. Ahju, Tehsil Joginder Nagar, District Mandi, H.P. ...Petitioner.

Versus

The Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P. ...Respondent.

03-10-2015

Present: Sh. Suresh Kumar Sharma, adv. csl. for the petitioner.

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Heard.

The case is fixed for evidence of petitioner. Ld. csl. for the petitioner has made statement that petitioner had not been contacting with me since far. As such, he does not want to proceed with this present claim petition/ reference and has prayed its dismissal. Statement recorded and placed on file. Accordingly, present reference is hereby dismissed as withdrawn.

2. Ordered accordingly. The parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication.
5. The file, after completion be consigned to the records.

Announced:
03.10.2015

(K.K.Sharma)
*Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.*

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref: No. 61/ 2014

Smt. Heema Devi w/o Shri Pyar Chand, r/o Village Patrain, P.O. Gangoti, Tehsil Joginder Nagar, District Mandi, H.P. ...Petitioner.

Versus

The Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P.
...Respondent.

03-10-2015

Present: Sh. Suresh Kumar Sharma, adv. csl. for the petitioner.
 Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Heard.

The case is fixed for evidence of petitioner. Ld. csl. for the petitioner has made statement that petitioner had not been contacting with me since far. As such, he does not want to proceed with this present claim petition/ reference and has prayed its dismissal. Statement recorded and placed on file. Accordingly, present reference is hereby dismissed as withdrawn.

2. Ordered accordingly. The parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication.
5. The file, after completion be consigned to the records.

Announced:
 03.10.2015

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref: No. 121/ 2014

Sh. Kaul Singh s/o Shri Khula Ram, r/o Village Khadiyar(Thara), P.O. & Tehsil Joginder Nagar, District Mandi, H.P.
...Petitioner.

Versus

The Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P.
...Respondent.

03-10-2015

Present: Sh. Suresh Kumar Sharma, adv. csl. for the petitioner.

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Heard.

The case is fixed for evidence of petitioner. Ld. csl. for the petitioner has made statement that petitioner had not been contacting with me since far. As such, he does not want to proceed with this present claim petition/ reference and has prayed its dismissal. Statement recorded and placed on file. Accordingly, present reference is hereby dismissed as withdrawn.

2. Ordered accordingly. The parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication.
5. The file, after completion be consigned to the records.

Announced:
03.10.2015

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA,
H.P.(Camp at Mandi)**

Ref: No. : 305/2012

Smt. Bohari Devi w/o Shri Sohan Singh, r/o Village Chhater, P.O. Brang, Tehsil Sarkaghat,
District Mandi, H.P. *...Petitioner.*

Versus

The Executive Engineer, HPPWD Division Dharampur, Distt. Mandi, H.P. *...Respondent.*

07-10-2015

Present: Sh. S.K. Sharma, Adv. csl. for the petitioner.
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Heard.

Ld. csl. for the petitioner has made statement qua withdrawal of claim petition by stating that corrigendum has not been received from the appropriate Government so far despite vigorous follow up and sending several letters to appropriate Government. He has made statement for withdrawal of claim petition with liberty to file fresh claim as well as to agitate the dispute afresh before the Competent Authority. Statement recorded and placed on record. In view of the statement so made

by Id. counsel for the petitioner, the claim petition is dismissed as withdrawn with liberty to file case afresh before the competent authority.

2. Ordered accordingly. The parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action /publication.
5. The file, after completion be consigned to the records.

Announced:
07.10.2015

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)
(CAMP AT MANDI)**

Ref No. : 196/2012

Date of Institution : 02.03.2012

Date of Decision : 07.10.2015

Shri Sanjay Kumar s/o Shri Duni Chand, r/o Village Consal, P.O. Bassi, Tehsil Joginder Nagar, District Mandi, H.P. . *...Petitioner.*

Versus

The Executive Engineer, H.P.S.E.B. Electrical Division, Joginder Nagar, District Mandi, H.P. *...Respondent*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Abhishek Lakhanpal, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Sanjay Kumar S/O Shri Duni Chand, Village Consal, P.O. Bassi, Tehsil Joginder Nagar, District Mandi, H.P. by the Executive Engineer, H.P.S.E.B. Electrical Division, Joginder Nagar, District Mandi, H.P. w.e.f. 25-07-1997 without following the provisions of the Industrial Disputes Act, 1947, as alleged by

workman, is legal and justified? If not, to what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employer?"

2. After the receipt of the abovestated reference, a corrigendum dated 4th June, 2014 was received from the appropriate government which reads as under:

"In the issue of reference the date of termination "25.7.1997" **be read as** "08.7.1998".

3. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

4. Brief facts of case are that petitioner/claimant had been engaged vide muster roll no.35 as daily waged beldar w.e.f. 25.4.1997 without any appointment letter and he worked upto 24.7.1997 (which shall henceforth be read as 8.7.1998 subsequent upon corrigendum dated 4th June, 2014). The petitioner/claimant claims to here rendered services to respondent sincerely and diligently for the period aforesaid but his services have been terminated by the respondent vide verbal order dated 25.7.1997. The grievance of the petitioner remains that the services of petitioner have been terminated without compliance of the Industrial Disputes Act as neither any notice was issued to petitioner or any charge sheet served upon him before his removal from service and at the same time, salary of one month as notice period was also not paid to him. It is further alleged that the respondent while terminating the services of petitioner had not followed the principle of 'Last come First go' as one Partap Chand who joined in 25.6.1997 had not been terminated and thus respondent had violated the provisions of Section 25-G of the Industrial Disputes Act. The grievance of the petitioner further remains that even after termination of the services of the petitioner several new persons were appointed i.e. namely S/Sh. Gian Chand on 20.9.1997, Keshav Ram on 25.9.1997, Dharam Paul on 12.01.1998, Balbir Singh on 21.4.1999 and Sanjay Kumar on 21.2.2002 without affording any opportunity of reemployment to the petitioner and thus by not offering opportunity for employment of petitioner, respondent has violated the provisions of Section 25-H of the Industrial Disputes Act. It is alleged that persons above-named were still working with the respondent on work charge/regular basis and for the said reason petitioner is also entitled for regularization from the date of his junior have been regularized. It further transpire from the claim petition that one Piar Chand s/o Shri Sohan Singh has been engaged by the respondent on 25.2.1999 whose services have been terminated on 21.4.1999 however services of Piar Chand had been reinstated along with 50% back wages by this court in pursuance to order dated 4.8.2005 passed in Reference no.401/2002 (RBT no.493/2004) on violation of the provisions of Section 25-G and 25-H of the Industrial Disputes Act and the said order of Labour Court was assailed before the Hon'ble High Court of H.P. by filing CWP No.1166/2005 which was decided on 29.11.2005 vide which the Award passed by this Court was upheld in which it was observed by the Hon'ble High Court that there was violation of the provisions of Sections 25-G and 25-H of the Industrial Disputes Act. Alleging to have completed 240 days in 12 calendar preceding months prior to termination and that the law does not require to have worked even 240 days for invoking the provision of Section 25-G and 25-H of the Industrial Disputes Act and the said view was reiterated in case titled the Executive Engineer, HPPWD Division Dharampur vs. Dhani Ram & others. It is alleged that in 1997 till 2002 newly appointed daily waged workers were engaged but petitioner/claimant has not been provided opportunity by the respondent as required under law. Accordingly, petitioner prays for setting aside the illegal termination order dated 25.7.1997 with direction to the respondent to reinstate the petitioner with full back wages, continuity in service, seniority and to any other consequential benefits.

5. The respondent contested claim petition, filed reply inter-alia taken preliminary objection of cause of action, locus standing reference being misconceived and not maintainable as

petitioner had not continuously worked 240 days in a calendar year. It is further claimed that petitioner was engaged for specific work for different spells as per availability of work as well as funds and that claim petition is time barred by limitation, laches and delay in view of judgment of Hon'ble High Court of H.P. In CWP No.398/2001 titled as M.C. Poanta Sahib vs. State of H.P. and another judgment of Liaq Ram vs. State of H.P. decided on 6.1.2011. On merits conceded that employment of petitioner was purely on casual basis who had abandoned the job time and again at his sweet will. It is also claimed that petitioner had not worked continuously 240 days in any calendar year who joined the respondent/department under Makriri Sub Division on 25.4.1997 to 24.7.1997 and left the work for reason best known to him. Thereafter, petitioner was again engaged by the respondent on 25.11.1997 to 20.12.1997 for a specific work, he again left job. It is claimed that as per availability of funds as well as work, petitioner was employed on 18.5.1998 who worked upto 7.7.1998 and even thereafter he abandoned the job. Thus, reasserting recurrent abandonment of job by petitioner, claim petition is stated to be barred by delay and laches and same was sought to be dismissed.

6. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

7. To prove his case, petitioner had examined himself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of demand notice, Ex. PW1/C copy of particulars of daily waged beldar, Ex. PW1/D mandays chart of Piar Chand, Ex. PW1/E copy of order dated 29.11.2005 passed in CWP no. 1166/2005 by the Hon'bel High Court of H.P., Ex. PW1/F copy of letter dated 27.1.2006, Ex. PW1/G copy of memorandum, Ex. PW1/H copy of letter dated 14.3.2014 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.R. Rana, the then Executive Engineer, HPSEBL, Joginder Nagar, tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B copy of mandays chart of petitioner and closed evidence.

8. I have heard the Authorized Representative/counsel representing petitioner and ld. counsel for respondent, gone through records of the case carefully.

9. From the contentions raised, following issues were framed by my ld. Predecessor on 10.11.2013 for determination:

1. Whether the termination of the services of the petitioner by the respondent is illegal and unjustified as alleged. If so, its effect? *OPP*
2. Whether the petitioner has no cause of action? *OPP*
3. Whether the petitioner has no locus standi to sue? *OPR*
4. Whether the claim petition is not maintainable in the present form? *OPR*
5. Whether the petitioner has concealed the true and material facts from the Court as alleged. If so, its effect? *OPR*
6. Whether the petition is barred by limitation as alleged? *OPR*
7. Relief.

10. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No.2 : No
Issue No.3 : No
Issue No.4 : No
Issue No.5 : Unpressed.
Issue No.6 : No

Relief. : Claim petition is allowed in part per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 AND 3

11. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. To prove his case, the petitioner has sworn in affidavit Ex. PW1/A under Order 18 Rule 4 CPC stipulating therein all material facts as stipulated in claim petition. He has specifically deposed on oath to have been engaged on 24.4.1997 and worked uninterruptedly till 7.7.1998 when his services were terminated by respondent on 8.7.1998. The copy of notice was forwarded to Labour Officer, Mandi for further necessary action whereupon conciliation proceeding was initiated. Since it is alleged that conciliation could not yield any positive reply the matter was sent to this Court for adjudication vide order dated 18.12.1997 of appropriate government. It is also stipulating in the affidavit that claimant/petitioner had initially challenged the order of Labour Commissioner by way of CWP No.2757/2008 decided on 16.11.2011 vide which order dated 18.12.20007 of Labour Commissioner was quashed and directed to refer the case to this Court for adjudication. The petitioner in his detailed affidavit has enumerated the circumstances in which incorrect date of termination was mentioned i.e. 24.7.1997 however the date was mentioned in stead of 7.7.1998. The petitioner has also mentioned in his affidavit that the persons who were junior to him were retained in service and he was arbitrarily removed from service. The petitioner has further proved that several persons who were junior to petitioner were reengaged after termination of the services of petitioner and thus petitioner claims violation of provisions of Section 25-G as well as Section 25-H of the Industrial Disputes Act by the respondent.

13. For the purpose of applicability of Section 25-F of Industrial Disputes Act, workman is to show that he has been in continuous service with the respondent employer for not less than one year. The workman is deemed in continuous service for period of one year if during the period of 12 calendar months preceding the date of termination a workman actually worked under the employer not less than 240 days by virtue of Section 25-B of the Industrial Disputes Act. Before proceeding further, it would be relevant to refer to mandays chart relied upon by the petitioner as well as respondent.

14. Mandays chart Ex. RW1/B of petitioner shows that he has worked for 16 days i.e. from 25.11.97 to 20.12.97, 7 days from 18.5.98 to 24.5.98, 29 days from 25.5.98 to 24.6.98 and 13 days from 25.6.98 to 7.7.98. This document clearly shows that petitioner had never worked for more than 240 days as the petitioner had worked for 65 days in all the two years i.e. 1997 & 1998. As such, when petitioner has not completed 240 days in a year, notice under Section 25-F (a) of Industrial Disputes Act was not required to be served upon by the respondent. Thus, there is no violation of Section 25-F of Industrial Disputes Act on part of respondent/department.

15. In so far as plea of respondent having violated the provisions of Sections 25-G is concerned, suffice would be to state here that one Piar Chand had been engaged by the respondent

on 25.2.1999 whereas the petitioner was admittedly engaged on 25.4.1997 i.e. after said Piar Chand who continued to work and whose services have not been terminated. PW1/C is the service particulars of daily waged beldars as stood 30.9.2007 shows that said Piar Chand at serial no.60 who is shown to have joined on 25.2.1999 whereas petitioner had joined earlier to him and Piar Chand continued to work for 52 days as reflected in mandays cahrt Ex. PW1/D. Thus, respondent while retrenching/terminating the services had ignored that a junior was allowed to remain in service whereas petitioner was retrenched on 8.7.1998. The evidence on record clearly goes to show that respondent/department had violated the provisions of Section 25-G of the Industrial Disputes Act as said Piar Chand was engaged on muster roll basis on 25.2.1999 whereas claimant/petitioner had been removed from service on 8.7.1998.

16. It is settled preposition of law for applicability of the provisions of Sections 25-G and 25-H of the Industrial Disputes Act, it is not necessary that the workman should have worked for 240 days and the requirement of having completed 240 days is not a condition precedent as has been held by the Hon'ble Apex Court in **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** and **Harjinder Singh vs. Punjab State Warehousing Corporation, AIR 2010 SC 1116**. In **HP State Electricity Board vs. Shri Charan Dass 2012(1) Him. L.R. (DB) 320**. Thus, even if petitioner had worked for 65 days as shown in mandays chart Ex. RW1/B yet while retaining a junior and terminating service of senior workman violated Section 25-G of the Industrial Disputes Act.

17. It further remains the case of claimant/petitioner that after termination of the services of petitioner/claimant, several persons junior to petitioner have been retained in service. In support of his plea petitioner has petitioner has relied upon Ex. PW1/C as well as Ex. PW1/H which showed that several workers were engaged after termination of petitioner. It is nowhere case of the respondent that petitioner was given any offer for reemployment/reengagement. RW1 Shri B.R. Rana, Executive Engineer, HPSEB has admitted in cross-examination that petitioner was senior to Piar Chand who although maintained by stating that petitioner had abandoned the job of his own. To prove abandonment of the job, the respondent was required to lead specific evidence and by simply stating that petitioner had abandoned the job plea is not sufficient and the respondent is required to issue notice or initiate proceeding against the petitioner which has not been so done by the respondent. As such, even when the petitioner has not succeeded in establishing its claim under Section 25-F of Industrial Disputes Act yet he would be entitled for relief sought for within the ambit of Section 25-G as well as 25-H of the Industrial Disputes Act.

18. In **Samishta Dube vs. City Board, Etawah & Another** reported in **1999 LLR 460 (SC)**, the Hon'ble Apex Court held that principle of 'Last come First go' applied even in the case of those employed on daily wages and thus for invocation of principle, no particular period of continuous service is required. Applying the ratio of this judgment to the present case, it may not be erroneous to conclude here that number of days petitioner worked, he was entitled for protection envisaged under Section 25-H of the Industrial Disputes Act. As such, termination of the services of petitioner by the respondent is held to be illegal and unjustified. Since services of petitioner has been illegally terminated he had certainly cause of action to seek redressal of grievance by making demand notice before the Labour Officer who consequently sent failure report and thereafter matter was referred to Labour Court. Being the victim of arbitrary act of respondent in removal from service, petitioner has certainly locus standi, the petitioner has cause of action as well as locus standi to pursue the claim petition as he had been affected by the termination order issued by respondent without any rhyme or reason. As per the claim petition as well as evidence on record nothing has stated by the claimant/petitioner in his affidavit about his loss of earning during period claim petition remained pending for adjudication. That being so, it could not be proved by the

claimant/petitioner that he was not having any earnings after his termination. On earning or non-earning of the petitioner being silent in evidence, this court left with no option but to hold that being able bodied person ageing about 35 years would have certainly remained employed for his own livelihood. As such, by not proving his means when he was allegedly gainfully employed it is held that the petitioner is not entitled for any back wages. Accordingly, issue no.1 is answered in affirmative whereas issue nos. 2 and 3 in negative and all the issues are thus answered in favour of petitioner and against respondent.

ISSUE NO. 4

19. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. counsel representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. That being so when petitioner/claimant was removed from service which is to be adjudicated by this Court, the court left with no option but hold that present claim petition is maintainable. Issue in question is answered in negative in favour of petitioner and against the respondent.

ISSUE NO. 5

20. This issue was not pressed by Id. counsel for the respondent, as such the issue is decided as unpressed against the respondent and in favour of petitioner. Resultantly, issue in question is answered in negative.

ISSUE NO. 6

21. Id. counsel representing respondent department has contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1998 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of conciliation proceeding before authority under Act, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when his services were illegally terminated. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

RELIEF

22. As sequel to my findings on foregoing issues, the termination order of petitioner is quashed and set aside and the respondent is directed to reinstate the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. Accordingly, claim petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The parties, however, shall bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 7th day of October, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref: No. : 46/2013

Sh. Abhilashu s/o Sh. Sidhu, r/o Village Rohal, P.O. Batwara, Tehsil Sunder Nagar, Distt. Mandi, H.P. *... Petitioner.*

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, Distt. Mandi, H.P. *...Respondent.*

12-10-2015

Present: Sh. S.S.Sippy, A.R.for the petitioner.
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Heard.

Ld. Authorised Representative for the petitioner has made statement today on the basis of affidavit dated 14-09-2015 filed by respondent/D.F.O. Suket Division, Sunder Nagar. It can be noticed from the proceedings of this case that in pursuance to receipt of Corrigendum dated 13-03-2015 from appropriate Government proceedings were initiated as partial modification of notification of the appropriate Government dated 30-03-2013 was made vide which name of claimant/petitioner as mentioned earlier was substituted. Since forest officer/respondent has sworn in affidavit dated 14-09-2015 raising no objection in correction of address of claimant/petitioner as modified vide Corrigendum no.11-1/18(Lab)ID/2013/Sunder Nagar dated 13-03-2015 of appropriate Government, no further direction is required to be passed by this Court. Henceforth,

name of claimant/petitioner shall be read as “Shri Abhilashu s/o Shri Sidhu, r/o Village Rohal, P.O. Batwara, Tehsil Sunder Nagar” for all intent and purposes while dealing with award dated 11-03-2014 passed in reference no.46/2013. In view of the statement so made by the authorised representative for petitioner/claimant aforesaid, the present reference is hereby disposed off accordingly.

2. Ordered accordingly. The parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication.
5. The file, after completion be consigned to the records.

Announced:
12.10.2015

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref: No. 122/ 2015

Sh. Babu Ram s/o Shri Polo Ram, r/o V.P.O. Baldhar, Tehsil & District Kangra, H.P.
...Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Electric Division Palampur, District Kangra, H.P. (Principal Employer).

2. Shri Saurabh Kuthiala, r/o V.P.O. Purana Kangra, Tehsil & Distt. Kangra, H.P.
...Respondents.
(Contractor).

26-10-2015

Present: None for the petitioner.

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent no.1. Respondent no.2 has not been served so far.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.40 A.M. Be awaited and put up after lunch hours.

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

26-10-2015 Present: None for the petitioner.

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent no.1 Respondent no.2 has not been served so far.

Case has been called again several times but none has appeared on behalf of the petitioner. It is 3.15 P.M. None appearance of petitioner or his Id. counsel today is indicative of the fact that petitioner is not interested to pursue present reference and accordingly reference is disposed off for non-prosecution. Reference is answered in the aforesaid terms. The parties to bear their own costs. Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:

26-10-2015

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref: No. : 360/2014

Shri Balbir Singh s/o Shri Govind Ram, r/o Village Gonthala, P.O. Sainthal, Tehsil Joginder Nagar, District Mandi, H.P. *...Petitioner.*

Versus

The Executive Engineer, B&R Division H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P.

...Respondent.

26-10-2015

Present: Petitioner in person.

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Notice to Labour Inspector, Joginder Nagar received which is on record vide which correct address of claimant/petitioner was sought. The petitioner has appeared before this Court today. At this stage, petitioner has made statement qua withdrawal of claim petition by stating that the respondent had regularised his services and therefore, he does not want to proceed further with this case. Shri Rajinder Kumar Sood, J.E. HPPWD Joginder Nagar appeared in the Court has identified claimant/petitioner vide separate statement. Statements recorded separately and placed on file. In view of the statements so made by petitioner, the reference is dismissed as withdrawn.

2. Ordered accordingly. The parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication.

5. The file, after completion be consigned to the records.

Announced:

26.10.2015

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref: No. 104/ 2014

Smt. Sonia w/o Shri Dev Raj, r/o Block No.3, Industrial Area Sansarpur Terrace, Tehsil Jaswan, District Kangra, H.P. *...Petitioner.*

Versus

The Managing Director, M/S Terrace Pharmaceuticals (P) Ltd., Plot No. 3B(a), Phase-III, Industrial Area, Sansarpur Terrace, Tehsil Jaswan, District Kangra, H.P. *...Respondent.*

27-10-2015 Present: None.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.55 A.M. Be awaited and put up after lunch hours.

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

27-10-2015 Present: None .

Case has been called again several times but none has appeared on behalf of the petitioner. It is 3.25 P.M. None appearance of petitioner or her ld. counsel today is indicative of the fact that petitioner is not interested to pursue present claim petition/reference and accordingly reference is disposed off for nonprosecution. Reference is answered in the aforesaid terms. The parties to bear their own costs. Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:

27-10-2015

(K.K.Sharma)

*Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.*

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref: No. 105/ 2014

Sh. Partap Singh s/o Shri Milap Singh, r/o House No.65, Block No.3, Industrial Area
Sansarpur Terrace, Tehsil Jaswan, District Kangra, H.P. *...Petitioner.*

Versus

The Managing Director, M/S Terrace Pharmaceuticals (P) Ltd., Plot No. 3B(a), Phase-III,
Industrial Area, Sansarpur Terrace, Tehsil Jaswan, District Kangra, H.P. *...Respondent.*

27-10-2015 Present: None.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.50 A.M. Be awaited and put up after lunch hours.

(K.K.Sharma)
*Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.*

27-10-2015 Present: None .

Case has been called again several times but none has appeared on behalf of the petitioner. It is 3.20 P.M. None appearance of petitioner or his ld. counsel today is indicative of the fact that petitioner is not interested to pursue present claim petition/reference and accordingly reference is disposed off for nonprosecution. Reference is answered in the aforesaid terms. The parties to bear their own costs. Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
27-10-2015

(K.K.Sharma)
*Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.*

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 171/2013

Date of Institution : 20.09.2013

Date of Decision : 27.10.2015

Shri Tej Ram s/o Shri Lalu, r/o Village Kataula, P.O. Uttersal, Tehsil Sadar, District Mandi,
H.P. ...Petitioner

Versus

The Divisional Forest Officer, Forest Division Mandi, District Mandi, H.P. ...Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. B.C. Singh, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Tej Ram, S/O Shri Lalu, R/O Village Kataula, P.O. Uttersal, Tehsil Sadar, District Mandi, H.P. during the years 2009 to 2011 and finally during Feb. 2012 by the Divisional Forest Officer, Forest Division Mandi, District Mandi, H.P. without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Briefly stated, the case of the claimant/petitioner is that his services had been terminated by the respondent illegally without giving notice. It is alleged that even while engaging new workers subsequently junior to him respondent department had appointed Devi Ram, Mine Ram and Lot Ram and thus the respondent has violated principle of ‘Last come First go’ envisaged under Section 25-G of the Industrial Disputes Act, 1947 (hereinafter called ‘the Act’ for brevity). It further remains the case of petitioner that during his service period has been given fictional breaks without any fault of petitioner and as such period of time to time break be deemed to be continuous service of petitioner with the respondent/department. Accordingly, prayer has been made for reengagement of petitioner with all the consequential benefits.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objection of maintainability, claim petition is being bad on account of delay and laches. On merits, it is claimed that forestry work was casual seasonal work and time bound work and that the daily waged workers are generally engaged on availability of work and funds for executing the forestry operation. It is further stated that petitioner was initially engaged as casual daily waged worker on bill basis by Range Officer, Kataula in the year 2008 who worked till 2012 but petitioner did not complete 240 days of work in any of those years. It further remains the case of the respondent that petitioner was not regular who used to come at work at his own sweet will and left the work but petitioner had never been terminated or given any fictional breaks as contended by the petitioner. It has been emphatically denied that any persons junior to petitioner had been engaged rather Devi Ram was engaged by the respondent along-with petitioner who worked till 2009 but no persons

with name of Mine Ram and Lot Ram were ever engaged by the respondent. Thus, denying retrenchment of petitioner in violation of principle of 'Last come First go' was also denied to have been violated while engaging junior. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of mandays chart from 1.9.2008 to 29.2.2012 concerning petitioner and closed the evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Ajit Thakur the then Divisional Forest Officer, Mandi, tendered/proved his affidavit Ex. RW1/A and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed by my Id. Predecessor on 10.11.2014 for determination:

1. Whether time to time termination of services of the petitioner by the respondent is illegal and unjustified as alleged. If so, its effect? *OPP*
2. Whether the petition is not maintainable in the present form? *OPR*
3. Whether the claim petition is bad on account of delay and laches. If so, its effect? *OPR*
4. Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No

Issue No.2 : No

Issue No.3 : No

Relief. : Claim petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

10. A bare glance on the mandays chart relied upon by the claimant/petitioner reveals that from 01.9.2008 to 31.12.2012, petitioner has never worked for more than 240 days in any of the years. The claim of the petitioner remains that he has rendered nine years service with the respondent/department and that respondent used to give fictional breaks without any notice and that while terminating his services in the year 2012 neither compensation nor salary of one month in lieu of notice was paid. It is evident from cross-examination of the petitioner that Mine Ram and Lot Ram had been engaged who were junior to petitioner. Before adverting to merits on the case, it would be appropriate mention here that petitioner has not produced on record any seniority list or record establishing that persons namely Mine Ram, Devi Ram and Lot Ram were working with the respondent/department. It is thus, uncorroborated testimony of the petitioner which shows that junior person to that of petitioner had been engaged whereas petitioner has been removed from service arbitrarily. In order to establish plea of time to time termination of the services of petitioner

by the respondent/department, it would not be erroneous to mention here that there is nothing in evidence on record except bald statement of petitioner which too does not inspire confidence on plea of time to time termination. Secondly, in cross-examination, petitioner has admitted that Mine Ram and Lot Ram had never worked at the same time besides he also admitted that respondent/department has produced correct record of employment of workers. That being so, the version of petitioner that he was given fictional breaks cannot be relied and plea of respondent, on the other hand, remains that petitioner used to work intermittently, work of the department being seasonal in nature but petitioner of his own did not attend the work and left the work but petitioner had never been removed or disengaged from service by the respondent/department but the plea of abandonment by petitioner has to be proved by reliable evidence and that the respondent cannot derive any benefit from plea of abandonment rather said plea is not proved by any reliable evidence.

11. RW1 Shri Ajit Thakur the then Divisional Forest Officer has admitted in cross-examination that on receipt of budget for forestry work senior workers were appointed but has maintained that after 2012, petitioner never came on work although he was called. In cross-examination RW1 has admitted that no registered notice was given to the petitioner to join back at the place of work but initially it was the petitioner who was to establish his plea firstly on the point having remained engaged in the particular period from the date of retrenchment and completed 240 days preceding 12 calendar months but there is no iota of evidence that petitioner had factually worked for 240 days in a year. Similarly, there is nothing authenticated in evidence establishing that persons junior were actually engaged on termination of the services of petitioner. As such, when it is not established that persons junior to petitioner were retained in service and that there is no corresponding record showing time to time termination as was required, it would be unsafe to hold that petitioner had established allegation of time to time termination by the respondent/department by reliable evidence. As such, on both the counts of case with regard to time to time termination as well as final termination, the petitioner has not established his claim. As such, petitioner failed to establish by reliable evidence that his termination was illegal and unjustified. Accordingly, issue no.1 is answered in negative against the petitioner and in favour of respondent.

ISSUE NO. 2

12. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO. 3

13. Ld. Dy. D.A. representing respondent department has contended with vehemence that claim petition is bad in the eyes of law on account of delay and laches. It has been pointed that time to time termination of petitioner in this case took place from 2009 to 2011 and final termination of the services of petitioner during February, 2012 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. Dy. D.A., ld. counsel/AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that

principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another**, (1999) 6 SCC 82 in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of conciliation proceeding before authority under Act, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when his services were illegally terminated. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

RELIEF

14. As a sequel to my findings on foregoing issues, the instant claim petition is dismissed. In the peculiar circumstances of the case, the parties are left to bear their own costs.

15. The reference is answered in the aforesaid terms.

16. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

17. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of October, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 21/2014

Date of Institution : 09.01.2014

Date of decision : 27.10.2015

Shri Mehar Singh s/o Shri Tek Chand, r/o Village Chakrod, P.O. Khadar, Tehsil Joginder Nagar, District Mandi, H.P. ...Petitioner

Versus

The Executive Engineer, B&R Division, HPPWD Joginder Nagar, Distt. Mandi, H.P.

...Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Mehar Singh, S/O Shri Tek Chand, R/O Village Chakrod, P.O. Khadar, Tehsil Joginder Nagar, District Mandi, H.P. during February, 2000 to 2007 by the Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner was engaged as daily rated beldar by respondent w.e.f. 07.02.2000 in its National Highway Division, Joginder Nagar and later he (petitioner) worked with the respondent in the newly created HPPWD Division in 2004 but he was given fictional breaks from time to time from his initial engagement till 31.8.2007. It is alleged that he was issued muster rolls for 15 days in a month, though the work was available for the entire month but, his juniors namely Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishhori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal. were not given such breaks and they were allowed to complete 240 days in each calendar year and the above named juniors have now been regularized. It is alleged that the respondent has stopped giving fictional breaks to the petitioner from 01.9.2007 and thereafter, the petitioner has completed 240 days in each calendar year. Therefore, there has been violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for brevity). This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The petitioner thus has filed a demand notice with the labour department but matter could not be reconciled as the petitioner has prayed for giving him the benefit of seniority, regularization and back wages etc.

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections of maintainability, petition being bad for non- joinder of necessary parties and claim petition being bad on account of delay and laches. On merits, engagement of the petitioner from February, 2000 is admitted. The allegation of giving fictional breaks up-to 31.8.2007 has been specifically denied. It is alleged that the work was made available to the petitioner as per the requirement and availability of the funds from time to time as per mandays chart annexure-RII and R-III and that all the workers in the annexure R-III were senior to the petitioner who have since been regularized. It is further alleged that the disengagement of the workmen on the availability of the funds and the work was strictly in accordance with the policy of ‘last come first go’ and thus allegation of violation of Section 25-F, 25-G and 25-H of the Industrial Disputes Act has been specifically denied. Thus, relying upon the plea of reference of regularization of petitioner, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. Petitioner filed rejoinder reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri V.S. Guleria, the then Executive Engineer, HPPWD (B&R) Division, Joginder Nagar as RW1, tendered Ex. RW1/A copy of letter dated 9th December, 2003, Ex. RW1/B regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D year-wise working days of daily wage Beldar and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 07.4.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the years February, 2000 to 2007 is/was improper and unjustified as alleged? *OPP*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? *OPP*
3. Whether the claim petition is not maintainable in the present form as alleged? *OPR*
4. Whether the claim petition is bad for non-joinder of necessary parties as alleged? *OPR*
5. Whether the claim petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? *OPR*
6. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. February, 2000 is not in dispute. It is the admitted case of petitioner that he

had worked since February, 2000 but he had been deliberately given fictional breaks by respondent so that he could not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own use to not come on his duty besides he willfully absented several times from it.

12. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent cannot be accepted that petitioner willfully absented from his duties as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties as absence from duty is serious misconduct, it is projected to be case as if petitioner came of his own and worked at his whims. The plea of petitioner, on the other hand remains that fictional breaks were deliberately given to him and that several other persons junior to petitioner namely Smt. Geeta Devi, Dalip Singh, Goutam Singh and Anil Kumar and others have been regularized by respondent who were actually not given fictional breaks at any point of time.

13. Perusal of mandays chart Ex. RW1/C would reveal that in the year 2000 petitioner had worked for 199 days, 147 days in 2001, 171 days in 2002, 171 days in 2003, 170 days in 2004, 170 days in 2005, 166 days in 2006, 229 days in 2007, 364 days in 2008, 354 days in 2009, 354 days in 2010, 353 days in 2011, 356 days in 2012 and 360 days in 2013. It can be noticed that in the several years petitioner has worked for less than 240 days, whereas for other remaining years he had worked for more than 240 days. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2002, 2003 and 2004 except at serial nos. 6 & 7 who had joined earlier to petitioner whereas petitioner had joined in 2000. Since respondent had not disputed to have engaged petitioner in February, 2000, he ought to have been regularized having continuously worked for about 8 years with requisite number of days required for regularization and on account of fictional break as stated above, which would show that other persons who had joined along-with him have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement but fictional breaks in no manner would affect or eclipse legitimate right of regularization in service of petitioner. However, petitioner has admitted in cross-examination that he had agricultural land and remained employed and as such it could not be stated with certainty that petitioner was not gainfully employed during the period of fictional breaks.

14. Stepping into the witness box as PW1, petitioner has sworn in detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 2000 to 2007 by giving fictional break whereas the persons junior to petitioner have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year as they had been invariably issued muster roll for whole of month in these years. In cross-examination, petitioner has admitted that he has been regularly provided with more than 240 days of work after 2007 which means the dispute is only for the years 2000 to 2007 as stated in the affidavit. It needs to be noticed that other co-workers working with petitioner or say who were junior were given muster roll for full month so that they completed 240 days in a year. RW1 Shri V.S. Guleria has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers who have been shown in the said seniority list were employed after the engagement of the petitioner except serial nos. 6&7. He has admitted that working of 240 days is to be established by

petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 2000 who had not deliberately given breaks in the years from 2000 to 2007 but he could not plead so as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty, any notice was issued for unauthorized absence and the version of RW1 that petitioner came and worked & go of his own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. Since absence from duty is serious misconduct, and there being nothing on record to show initiation of proceeding, plea set forth by respondent qua abandonment of job by petitioner intermittently merits rejection. As such, the plea of fictional break given to the petitioner from the year 2000 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well. Although, petitioner being in employment at the time of passing of award, being given fictional breaks as stated above is duly established but petitioner cannot be deprived of his legitimate right to seek seniority as well as continuity in service from his date of joining along-with other persons working with him. Thus, petitioner could not have been discriminated arbitrarily who has certainly been discriminated as stated in foregoing paras. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent during 2000 to 2007 was certainly illegal and unjustified which is manifestly in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** in the circumstances of the case. Issues are accordingly decided in part in favour of the petitioner and against the respondent.

ISSUE NO. 3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO. 4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case in claim petition as petitioner was initially appointed with respondent only PW1 has admitted in cross-examination that petitioner was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 5

17. Ld. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 2000 to 2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, he come to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by ld. Dy. D.A. on delay to the petitioner. As such, delay which is not

questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:-

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, petitioner is held to be in continuous uninterrupted service with the respondent from the date of his initial engagement, the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of October, 2015.

(K.K. Sharma)

Presiding Judge,

Labour Court-cum-Industrial

Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 329/2014

Date of Institution : 25.10.2014

Date of decision : 27.10.2015

Smt. Machindra Devi w/o Shri Pyar Chand, r/o Village Ras, P.O. Panjalag, Tehsil Joginder Nagar, District Mandi, H.P. *...Petitioner*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P. *...Respondent*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Smt. Machindra Devi, W/O Shri Pyar Chand, R/O Village Ras, P.O. Panjalag, Tehsil Joginder Nagar, District Mandi, H.P. during January, 1999 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed her statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner was engaged as daily rated beldar by respondent w.e.f. 01.01.1999 in its National Highway Division, Joginder Nagar and later she (petitioner) worked with the respondent in the newly created HPPWD Division in 2004 but she was given fictional breaks from time to time from her initial engagement till 31.8.2007. It is alleged that she was issued muster rolls for 15 days in a month, though the work was available for the entire month but, her juniors namely Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishhori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal. were not given such breaks and they were allowed to complete 240 days in each calendar year and the above named juniors have now been regularized. It is alleged that the respondent has stopped giving fictional breaks to the petitioner from 01.9.2007 and thereafter, the petitioner has completed 240 days in each calendar year. Therefore, there has been violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for brevity). This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The petitioner thus has filed a demand notice with the labour department but matter could not be reconciled as the petitioner has prayed for giving her the benefit of seniority, regularization and back wages etc.

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections of maintainability, petition being bad for non- joinder of necessary parties and claim petition being bad on account of delay and laches. On merits, engagement of the petitioner from January, 1999 is admitted. The allegation of giving fictional breaks up-to 31.8.2007 has been specifically denied. It is alleged that the work was made available to the petitioner as per the requirement and availability of the funds from time to time as per mandays chart annexure-RII and R-III and that all the workers in the annexure R-III were senior to the petitioner who have since been regularized. It is further alleged that the disengagement of the workmen on the availability of the funds and the work was strictly in accordance with the policy of 'last come first go' and thus allegation of violation of Section 25-F, 25-G and 25-H of the Industrial Disputes Act has been specifically denied. Thus, relying upon the plea of reference of regularization of petitioner, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by the petitioner.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/ A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri V.S. Guleria, the then Executive Engineer, HPPWD (B&R) Division, Joginder Nagar as RW1, tendered Ex. RW1/A copy of letter dated 9th December, 2003, Ex. RW1/B regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D year-wise working days of daily wage Beldar and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 07.4.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the year January, 1999 to 31-08-2007 is/was improper and unjustified as alleged? *OPP*

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? OPP
3. Whether the claim petition is not maintainable in the present form as alleged? OPR
4. Whether the claim petition is bad for non-joinder of necessary parties as alleged? OPR
5. Whether the claim petition is bad on account of delay and laches on the part of the applicant as alleged. OPR
6. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes
 Issue No.2 : Discussed
 Issue No.3 : No
 Issue No.4 : No
 Issue No.5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. January, 1999 is not in dispute. It is the admitted case of petitioner that she had worked since January, 1999 but she had been deliberately given fictional breaks by respondent so that she could not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as she of her own use to not come on her duty besides she willfully absented several times from it.

12. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent cannot be accepted that petitioner willfully absented from her duties as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for her unauthorized absence from her duties as absence from duty is serious misconduct, it is projected to be case as if petitioner came of her own and worked at her whims. The plea of petitioner, on the other hand remains that fictional breaks were deliberately given to her and that several other persons junior to petitioner namely Smt. Geeta Devi, Dalip Singh, Goutam Singh and Anil Kumar and others have been regularized by respondent who were actually not given fictional breaks at any point of time.

13. Perusal of mandays chart Ex. RW1/C would reveal that in the year 1999 petitioner had worked for 216 days, 220 days in 2000, 190 days in 2001, 172 days in 2002, 172 days in 2003, 170

days in 2004, 169 days in 2005, 161 days in 2006, 198 days in 2007, 362 days in 2008, 343 days in 2009, 356 days in 2010, 347 days in 2011, 338 days in 2012 and 346 days in 2013. It can be noticed that in the several years petitioner has worked for less than 240 days, whereas for other remaining years she had worked for more than 240 days. Thus, break in service being within a period of nine years from her termination was definitely a fictional break as in remaining years she had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 1999, 2000, 2002, 2003 and 2004 except at serial no. 6 who had joined earlier to petitioner whereas petitioner had joined in 1999. Since respondent had not disputed to have engaged petitioner in 1999, she ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and there being no fictional break as stated above, which would show that other persons who had joined along-with her have been regularized but the petitioner has been deprived of her legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming her seniority and continuity in service from her initial engagement but fictional breaks in no manner would affect or eclipse legitimate right of regularization in service of petitioner. However, petitioner has admitted in cross-examination that she had agricultural land and remained employed and as such it could not be stated that certainty that petitioner was not gainfully employed during the period of fictional breaks.

14. Stepping into the witness box as PW1, petitioner has sworn in detailed affidavit under Order 18 Rule 4 CPC stipulating therein that she had been engaged and disengaged between 1999 to 2007 by giving fictional break whereas the persons junior to petitioner have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year as they had been invariably issued muster roll for whole of month in these years. In cross-examination, petitioner has admitted that she has been regularly provided with more than 240 days of work after 2007 which means the dispute is only for the years 1999 to 2007 as stated in the affidavit. It needs to be noticed that other co-workers working with petitioner or say who were junior were given muster roll for full month so that they completed 240 days in a year. RW1 Shri V.S. Guleria has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers who have been shown in the said seniority list were employed after the engagement of the petitioner except serial no. 6. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 1999 who had not been issued any appointment letter but denied that petitioner had been deliberately given breaks in the years from 1999 to 2007 but he could not plead so as no corresponding record has been produced by the respondent to establish that on absence of petitioner from her duty, any notice was issued for unauthorized absence and the version of RW1 that petitioner came and worked & go of her own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for her absence from duty at any point of time. Since absence from duty is serious misconduct, and there being nothing on record to show initiation of proceeding, plea set forth by respondent qua abandonment of job by petitioner intermittently merits rejection. As such, the plea of fictional break given to the petitioner from the year 1999 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well. Although, petitioner being in employment at the time of passing of award, being given fictional breaks as stated above is duly established but petitioner cannot be deprived of her legitimate right to seek seniority as well as continuity in service from her date of joining along-with other persons working with him. Thus, petitioner could not have been discriminated arbitrarily who has certainly been discriminated as stated in foregoing paras. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in

service by the respondent during 1999 to 2007 was certainly illegal and unjustified which manifestly in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, she is to be given benefit of seniority and continuity in service **except back wages** in the circumstances of the case. Issues are accordingly decided in part in favour of the petitioner and against the respondent.

ISSUE NO. 3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO. 4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case in claim petition as petitioner was initially appointed with respndent only PW1 has admitted in cross-examination that petitioner was working with respondent although she earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 5

17. Id. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 1999 to 31.8.2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, she come to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Id. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by Id. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits

without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, it is held that the petitioner is held to be in continuous uninterrupted service with the respondent from the date of her initial engagement, the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and her seniority shall be reckoned from her initial date of engagement. Accordingly, claim petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. She shall, however, be considered for regularization by respondent at the time when her juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of October, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 331/2014**Date of Institution : 25.10.2014****Date of decision : 27.10.2015**

Smt. Satya Devi w/o Shri Hari Singh, r/o Village Mangail, P.O. Khaddar, Tehsil Joginder Nagar, District Mandi, H.P. ...Petitioner.

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P. ...Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Smt. Satya Devi, W/O Shri Hari Singh, R/O Village Mangail, P.O. Khaddar, Tehsil Joginder Nagar, (Ladbharol), District Mandi, H.P. during March, 1999 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed her statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner was engaged as daily rated beldar by respondent w.e.f. 01.03.1999 in its National Highway Division, Joginder Nagar and later she (petitioner) worked with the respondent in the newly created HPPWD Division in 2004 but she was given fictional breaks from time to time from her initial engagement till 31.8.2007. It is alleged that she was issued muster rolls for 15 days in a month, though the work was available for the entire month but, her juniors namely Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishhori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal. were not given such breaks and they were allowed to complete 240 days in each calendar year and the above named juniors have now been regularized. It is alleged that the respondent has stopped giving fictional breaks to the petitioner from 01.9.2007 and thereafter, the petitioner has completed 240 days in each calendar year. Therefore, there has been violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for brevity). This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The petitioner thus has filed a demand notice with the labour department but matter could not be reconciled as the petitioner has prayed for giving her the benefit of seniority, regularization and back wages etc.

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections of maintainability, petition being bad for non-joinder of necessary parties and claim petition being bad on account of delay and laches. On merits, engagement of the petitioner from September, 1999 is admitted. The allegation of giving fictional breaks up-to 31.8.2007 has been specifically denied. It is alleged that the work was made available to the petitioner as per the requirement and availability of the funds from time to time as per mandays chart annexure-RII and R-III and that all the workers in the annexure R-III were senior to the petitioner who have since been regularized. It is further alleged that the disengagement of the workmen on the availability of the funds and the work was strictly in accordance with the policy of 'last come first go' and thus allegation of violation of Section 25-F, 25-G and 25-H of the Industrial Disputes Act has been specifically denied. Thus, relying upon the plea of reference of regularization of petitioner, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by the petitioner.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/ A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri V.S. Guleria, the then Executive Engineer, HPPWD (B&R) Division, Joginder Nagar as RW1, tendered Ex. RW1/A copy of letter dated 9th December, 2003, Ex. RW1/B regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D year-wise working days of daily wage Beldar and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 07.4.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the year March, 1999 to 31-08-2007 is/was improper and unjustified as alleged? *OPP*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? *OPP*
3. Whether the claim petition is not maintainable in the present form as alleged? *OPR*
4. Whether the claim petition is bad for non-joinder of necessary parties as alleged? *OPR*
5. Whether the claim petition is bad on account of delay and laches on the part of the applicant as alleged. *OPR*
6. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Relief: Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. September, 1999 is not in dispute. It is the admitted case of petitioner that she had worked since September, 1999 but she had been deliberately given fictional breaks by respondent so that she could not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as she of her own use to not come on her duty besides she willfully absented several times from it.

12. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent cannot be accepted that petitioner willfully absented from her duties as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for her unauthorized absence from her duties as absence from duty is serious misconduct, it is projected to be case as if petitioner came of her own and worked at her whims. The plea of petitioner, on the other hand remains that fictional breaks were deliberately given to her and that several other persons junior to petitioner namely Smt. Geeta Devi, Dalip Singh, Goutam Singh and Anil Kumar and others have been regularized by respondent who were actually not given fictional breaks at any point of time.

13. Perusal of mandays chart Ex. RW1/C would reveal that in the year 1999 petitioner had worked for 78 days, 216 days in 2000, 146 days in 2001, 168 days in 2002, 171 days in 2003, 170 days in 2004, 169 days in 2005, 164 days in 2006, 230 days in 2007, 360 days in 2008, 361 days in 2009, 357 days in 2010, 358 days in 2011, 326 days in 2012 and 268 days in 2013. It can be noticed that in the several years petitioner has worked for less than 240 days, whereas for other remaining years she had worked for more than 240 days. Thus, break in service being within a period of nine years from her termination was definitely a fictional break as in remaining years she had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2000, 2002, 2003 and 2004 except at serial nos. 6&7 who had joined earlier to petitioner whereas petitioner had joined in 1999. Since respondent had not disputed to have engaged petitioner in 1999, she ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and there being no fictional break as stated above, which would show that other persons who had joined along-with her have been regularized but the petitioner has been deprived of her legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming her seniority and continuity in service from her initial engagement but fictional breaks in no manner would affect or eclipse legitimate right of regularization in service of petitioner. However, petitioner has admitted in cross-examination that she had agricultural land and

remained employed and as such it could not be stated that certainty that petitioner was not gainfully employed during the period of fictional breaks.

14. Stepping into the witness box as PW1, petitioner has sworn in detailed affidavit under Order 18 Rule 4 CPC stipulating therein that she had been engaged and disengaged between 1999 to 2007 by giving fictional break whereas the persons junior to petitioner have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year as they had been invariably issued muster roll for whole of month in these years. In cross-examination, petitioner has admitted that she has been regularly provided with more than 240 days of work after 2007 which means the dispute is only for the years 1999 to 2007 as stated in the affidavit. It needs to be noticed that other co-workers working with petitioner or say who were junior were given muster roll for full month so that they completed 240 days in a year. RW1 Shri V.S. Guleria has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers who have been shown in the said seniority list were employed after the engagement of the petitioner except serial nos. 6&7. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 1999 who had not been issued any appointment letter but denied that petitioner had been deliberately given breaks in the years from 1999 to 2007 but he could not plead so as no corresponding record has been produced by the respondent to establish that on absence of petitioner from her duty, any notice was issued for unauthorized absence and the version of RW1 that petitioner came and worked & go of her own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for her absence from duty at any point of time. Since absence from duty is serious misconduct, and there being nothing on record to show initiation of proceeding, plea set forth by respondent qua abandonment of job by petitioner intermittently merits rejection. As such, the plea of fictional break given to the petitioner from the year 1999 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well. Although, petitioner being in employment at the time of passing of award, being given fictional breaks as stated above is duly established but petitioner cannot be deprived of her legitimate right to seek seniority as well as continuity in service from her date of joining along-with other persons working with him. Thus, petitioner could not have been discriminated arbitrarily who has certainly been discriminated as stated in foregoing paras. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent during 1999 to 2007 was certainly illegal and unjustified which manifestly in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, she is to be given benefit of seniority and continuity in service **except back wages** in the circumstances of the case. Issues are accordingly decided in part in favour of the petitioner and against the respondent.

ISSUE NO. 3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO. 4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party

to be impleaded in this case in claim petition as petitioner was initially appointed with respondent only PW1 has admitted in cross-examination that petitioner was working with respondent although she earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 5

17. Ld. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 1999 to 31.8.2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, she came to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by Ld. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled proposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, it is held that the petitioner is held to be in continuous uninterrupted service with the respondent from the date of her initial engagement, the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and her seniority shall be reckoned from her initial date of engagement. Accordingly, claim petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. She shall, however, be considered for regularization by respondent at the time when her juniors have been regularized as per policy governing daily wages as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of October, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 332/2014

Date of Institution : 25.10.2014

Date of decision : 27.10.2015

Smt. Kala Devi w/o Shri Chuhan Singh, r/o Village Ras, P.O. Panjalag, Tehsil Joginder Nagar, District Mandi, H.P. *...Petitioner*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P. *...Respondent*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Smt. Kala Devi, W/O Shri Chuhar Singh, R/O Village Ras, P.O. Panjalag, Tehsil Joginder Nagar, District Mandi, H.P. during December, 1998 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed her statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner was engaged as daily rated beldar by respondent w.e.f. 01.12.1998 in its National Highway Division, Joginder Nagar and later she (petitioner) worked with the respondent in the newly created HPPWD Division in 2004 but she was given fictional breaks from time to time from her initial engagement till 31.8.2007. It is alleged that she was issued muster rolls for 15 days in a month, though the work was available for the entire month but, her juniors namely Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishhori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal. were not given such breaks and they were allowed to complete 240 days in each calendar year and the above named juniors have now been regularized. It is alleged that the respondent has stopped giving fictional breaks to the petitioner from 01.9.2007 and thereafter, the petitioner has completed 240 days in each calendar year. Therefore, there has been violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for brevity). This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The petitioner thus has filed a demand notice with the labour department but matter could not be reconciled as the petitioner has prayed for giving her the benefit of seniority, regularization and back wages etc.

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections of maintainability, petition being bad for non- joinder of necessary parties and claim petition being bad on account of delay and laches. On merits, engagement of the petitioner from December, 1998 is admitted. The allegation of giving fictional breaks up-to 31.8.2007 has been specifically denied. It is alleged that the work was made available to the petitioner as per the requirement and availability of the funds from time to time as per mandays chart annexure-RII and R-III and that all the workers in the annexure R-III were senior to the petitioner who have since been regularized. It is further alleged that the disengagement of the workmen on the availability of the funds and the work was strictly in accordance with the policy of ‘last come first go’ and thus allegation of violation of Section 25-F, 25-G and 25-H of the Industrial Disputes Act has been specifically denied. Thus, relying upon the plea of reference of regularization of petitioner, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by the petitioner.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/ A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri V.S. Guleria, the then Executive Engineer, HPPWD (B&R) Division, Joginder Nagar as RW1, tendered Ex. RW1/A copy of letter dated 9th December, 2003, Ex. RW1/B regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D year-wise working days of daily wage Beldar and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 16.5.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the year March, 1999 to 31-08-2007 is/was illegal and unjustified as alleged? *OPP*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? *OPP*
3. Whether the claim petition is not maintainable in the present form as alleged? *OPR*
4. Whether the claim petition is bad for non-joinder of necessary parties as alleged? *OPR*
5. Whether the petition is bad on account of delay and laches on the part of the applicant as alleged. *OPR*

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Relief: Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. December, 1998 is not in dispute. It is the admitted case of petitioner that she had worked since December, 1998 but she had been deliberately given fictional breaks by respondent so that she could not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as she of her own use to not come on her duty besides she willfully absented several times from it.

12. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent cannot be accepted that petitioner willfully absented from her duties as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for her unauthorized absence from her duties as absence from duty is serious misconduct, it is projected to be case as if petitioner came of her own and worked at her whims. The plea of petitioner, on the other hand remains that fictional breaks were deliberately given to her and that several other persons junior to petitioner namely Smt. Geeta Devi, Dalip Singh, Goutam Singh and Anil Kumar and others have been regularized by respondent who were actually not given fictional breaks at any point of time.

13. Perusal of mandays chart Ex. RW1/C would reveal that in the year 1998 petitioner had worked for 18 days, 221 days in 1999, 220 days in 2000, 191 days in 2001, 176 days in 2002, 172 days in 2003, 170 days in 2004, 170 days in 2005, 153 days in 2006, 232 days in 2007, 362 days in 2008, 361 days in 2009, 359 days in 2010, 357 days in 2011, 346 days in 2012 and 361 days in 2013. It can be noticed that in the several years petitioner has worked for less than 240 days, whereas for other remaining years she had worked for more than 240 days. Thus, break in service being within a period of nine years from her termination was definitely a fictional break as in remaining years she had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 1999, 2000, 2002, 2003 and 2004 except at serial no. 6 who had joined earlier to petitioner whereas petitioner had joined in 1998. Since respondent had not disputed to have engaged petitioner in 1998, she ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and there being no fictional break as stated above, which would show that other persons who had joined along-with her have been regularized but the petitioner has been deprived of her legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming her seniority and continuity in service from her initial engagement but fictional breaks in no manner would affect or eclipse legitimate right of regularization in service of petitioner. However, petitioner has admitted in cross-examination that she had agricultural land and remained employed and as such it could not be stated that certainty that petitioner was not gainfully employed during the period of fictional breaks.

14. Stepping into the witness box as PW1, petitioner has sworn in detailed affidavit under Order 18 Rule 4 CPC stipulating therein that she had been engaged and disengaged between 1998 to 2007 by giving fictional break whereas the persons junior to petitioner have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year as they had been invariably issued muster roll for whole of month in these years. In cross-examination, petitioner has admitted that she has been regularly provided with more than 240 days

of work after 2007 which means the dispute is only for the years 1998 to 2007 as stated in the affidavit. It needs to be noticed that other co-workers working with petitioner or say who were junior were given muster roll for full month so that they completed 240 days in a year. RW1 Shri V.S. Guleria has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers who have been shown in the said seniority list were employed after the engagement of the petitioner except serial no. 6. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 1998 who had not been issued any appointment letter but denied that petitioner had been deliberately given breaks in the years from 1998 to 2007 but he could not plead so as no corresponding record has been produced by the respondent to establish that on absence of petitioner from her duty, any notice was issued for unauthorized absence and the version of RW1 that petitioner came and worked & go of her own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for her absence from duty at any point of time. Since absence from duty is serious misconduct, and there being nothing on record to show initiation of proceeding, plea set forth by respondent qua abandonment of job by petitioner intermittently merits rejection. As such, the plea of fictional break given to the petitioner from the year 1998 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well. Although, petitioner being in employment at the time of passing of award, being given fictional breaks as stated above is duly established but petitioner cannot be deprived of her legitimate right to seek seniority as well as continuity in service from her date of joining along-with other persons working with him. Thus, petitioner could not have been discriminated arbitrarily who has certainly been discriminated as stated in foregoing paras. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent during 1998 to 2007 was certainly illegal and unjustified which manifestly in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, she is to be given benefit of seniority and continuity in service **except back wages** in the circumstances of the case. Issues are accordingly decided in part in favour of the petitioner and against the respondent.

ISSUE NO. 3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO. 4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case in claim petition as petitioner was initially appointed with respondent only PW1 has admitted in cross-examination that petitioner was working with respondent although she earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 5

17. Ld. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was

given fictional breaks from 1998 to 31.8.2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, she come to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by Id. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC82**, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, it is held that the petitioner is held to be in continuous uninterrupted service with the respondent from the date of her initial engagement, the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and her seniority shall be reckoned from her initial date of engagement. Accordingly, claim petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of

respondent with all consequential benefits **except back wages**. She shall, however, be considered for regularization by respondent at the time when her juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of October, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 357/2014

Date of Institution : 16.12.2014

Date of decision : 27.10.2015

Smt. Lata Devi w/o Shri Bhekh Singh, r/o Village Kunkar, P.O. Drubbal, Tehsil Joginder Nagar, District Mandi, H.P. ...Petitioner.

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P. ...Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Smt. Lata Devi, W/O Shri Bhekh Singh, R/O Village Kunkar, P.O. Drubbal, Tehsil Joginder Nagar, District Mandi, H.P. September, 2001 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages,

past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed her statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner was engaged as daily rated beldar by respondent w.e.f. 05.09.2001 in its National Highway Division, Joginder Nagar and later she (petitioner) worked with the respondent in the newly created HPPWD Division in 2004 but she was given fictional breaks from time to time from her initial engagement till 31.8.2007. It is alleged that she was issued muster rolls for 15 days in a month, though the work was available for the entire month but, her juniors namely Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishhori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal. were not given such breaks and they were allowed to complete 240 days in each calendar year and the above named juniors have now been regularized. It is alleged that the respondent has stopped giving fictional breaks to the petitioner from 01.9.2007 and thereafter, the petitioner has completed 240 days in each calendar year. Therefore, there has been violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for brevity). This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The petitioner thus has filed a demand notice with the labour department but matter could not be reconciled as the petitioner has prayed for giving her the benefit of seniority, regularization and back wages etc.

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections of maintainability, petition being bad for non- joinder of necessary parties and claim petition being bad on account of delay and laches. On merits, engagement of the petitioner from October, 2001 is admitted. The allegation of giving fictional breaks up-to 31.8.2007 has been specifically denied. It is alleged that the work was made available to the petitioner as per the requirement and availability of the funds from time to time as per mandays chart annexure-RII and R-III and that all the workers in the annexure R-III were senior to the petitioner who have since been regularized. It is further alleged that the disengagement of the workmen on the availability of the funds and the work was strictly in accordance with the policy of 'last come first go' and thus allegation of violation of Section 25-F, 25-G and 25-H of the Industrial Disputes Act has been specifically denied. Thus, relying upon the plea of reference of regularization of petitioner, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by the petitioner.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/ A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri V.S. Guleria, the then Executive Engineer, HPPWD (B&R) Division, Joginder Nagar as RW1, tendered Ex. RW1/A copy of letter dated 9th December, 2003, Ex. RW1/B regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D year-wise working days of daily wage Beldar and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 16.5.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the year September, 2001 to 31-08- 2007 is/was illegal and unjustified as alleged? *OPP*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? *OPP*
3. Whether the claim petition is not maintainable in the present form as alleged? *OPR*
4. Whether the claim petition is bad for non-joinder of necessary parties as alleged? *OPR*
5. Whether the petition is bad on account of delay and laches on the part of the applicant as alleged. *OPR*

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes
 Issue No.2 : Discussed
 Issue No.3 : No
 Issue No.4 : No
 Issue No.5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. October, 2001 is not in dispute. It is the admitted case of petitioner that she had worked since October, 2001 but she had been deliberately given fictional breaks by respondent so that she could not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as she of her own use to not come on her duty besides she willfully absented several times from it.

12. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent cannot be accepted that petitioner willfully absented from her duties as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for her unauthorized absence from her duties as absence from duty is serious misconduct, it is projected to be case as if petitioner came of her own and worked at her whims.

The plea of petitioner, on the other hand remains that fictional breaks were deliberately given to her and that several other persons junior to petitioner namely Smt. Geeta Devi, Dalip Singh, Goutam Singh and Anil Kumar and others have been regularized by respondent who were actually not given fictional breaks at any point of time.

13. Perusal of mandays chart Ex. RW1/C would reveal that in the year 2001 petitioner had worked for 38 days, 164 days in 2002, 172.5 days in 2003, 144.5 days in 2004, 170 days in 2005, 166.5 days in 2006, 227 days in 2007, 366 days in 2008, 363 days in 2009, 355.5 days in 2010, 361 days in 2011, 354 days in 2012, 365 days in 2013 and 357 days in 2014. It can be noticed that in the several years petitioner has worked for less than 240 days, whereas for other remaining years she had worked for more than 240 days. Thus, break in service being within a period of nine years from her termination was definitely a fictional break as in remaining years she had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2002, 2003 and 2004 except at serial nos. 1,7,8 and 10 who had joined earlier to petitioner whereas petitioner had joined in 2001. Since respondent had not disputed to have engaged petitioner in 2001, she ought to have been regularized having continuously worked for about 7 years with requisite number of days required for regularization and there being no fictional break as stated above, which would show that other persons who had joined along-with her have been regularized but the petitioner has been deprived of her legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming her seniority and continuity in service from her initial engagement but fictional breaks in no manner would affect or eclipse legitimate right of regularization in service of petitioner. However, petitioner has admitted in cross-examination that she had agricultural land and remained employed and as such it could not be stated that certainty that petitioner was not gainfully employed during the period of fictional breaks.

14. Stepping into the witness box as PW1, petitioner has sworn in detailed affidavit under Order 18 Rule 4 CPC stipulating therein that she had been engaged and disengaged between 2001 to 2007 by giving fictional break whereas the persons junior to petitioner have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year as they had been invariably issued muster roll for whole of month in these years. In cross-examination, petitioner has admitted that she has been regularly provided with more than 240 days of work after 2007 which means the dispute is only for the years 2001 to 2007 as stated in the affidavit. It needs to be noticed that other co-workers working with petitioner or say who were junior were given muster roll for full month so that they completed 240 days in a year. RW1 Shri V.S. Guleria has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers who have been shown in the said seniority list were employed after the engagement of the petitioner except serial nos. 1,7,8 and 10. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 2001 who had not been issued any appointment letter but denied that petitioner had been deliberately given breaks in the years from 2001 to 2007 but he could not plead so as no corresponding record has been produced by the respondent to establish that on absence of petitioner from her duty, any notice was issued for unauthorized absence and the version of RW1 that petitioner came and worked & go of her own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for her absence from duty at any point of time. Since absence from duty is serious misconduct, and there being nothing on record to show initiation of proceeding, plea set forth by respondent qua abandonment of job by petitioner intermittently merits rejection. As such, the plea of fictional break given to the petitioner from the

year 2001 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well. Although, petitioner being in employment at the time of passing of award, being given fictional breaks as stated above is duly established but petitioner cannot be deprived of her legitimate right to seek seniority as well as continuity in service from her date of joining along-with other persons working with him. Thus, petitioner could not have been discriminated arbitrarily who has certainly been discriminated as stated in foregoing paras. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent during 2001 to 2007 was certainly illegal and unjustified which manifestly in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, she is to be given benefit of seniority and continuity in service **except back wages** in the circumstances of the case. Issues are accordingly decided in part in favour of the petitioner and against the respondent.

ISSUE NO. 3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO. 4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case in claim petition as petitioner was initially appointed with respondent only PW1 has admitted in cross-examination that petitioner was working with respondent although she earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 5

17. Ld. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 2001 to 31.8.2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, she came to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by ld. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and**

Ors., 2005 (1) Himachal Law Journal 248, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, it is held that the petitioner is held to be in continuous uninterrupted service with the respondent from the date of her initial engagement, the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and her seniority shall be reckoned from her initial date of engagement. Accordingly, claim petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. She shall, however, be considered for regularization by respondent at the time when her juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of October, 2015.

(K.K. Sharma)

*Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.*

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 358/2014

Date of Institution : 16.12.2014

Date of decision : 27.10.2015

Shri Pritam Singh s/o Shri Hira Lal, r/o Village Charonjh, P.O. Drubbal, Tehsil Joginder
Nagar, District Mandi, H.P. *...Petitioner*

Versus

The Executive Engineer, B&R Division, HPPWD Joginder Nagar, Distt. Mandi, H.P.
....Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Pritam Singh, S/O Shri Hira Lal, R/O Village Charonjh, P.O. Drubbal, Tehsil Joginder Nagar, District Mandi, H.P. during September 2000 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner was engaged as daily rated beldar by respondent w.e.f. 01.9.2000 in its National Highway Division, Joginder Nagar and later he (petitioner) worked with the respondent in the newly created HPPWD Division in 2004 but he was given fictional breaks from time to time from his initial engagement till 31.8.2007. It is alleged that he was issued muster rolls for 15 days in a month, though the work was available for the entire month but, his juniors namely Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishhori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal. were not given such breaks and they were allowed to complete 240 days in each calendar year and the above named juniors have now been regularized. It is alleged that the respondent has stopped giving fictional breaks to the petitioner from 01.9.2007 and thereafter, the petitioner has completed 240

days in each calendar year. Therefore, there has been violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for brevity). This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The petitioner thus has filed a demand notice with the labour department but matter could not be reconciled as the petitioner has prayed for giving him the benefit of seniority, regularization and back wages etc.

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections of maintainability, petition being bad for non-joinder of necessary parties and claim petition being bad on account of delay and laches. On merits, engagement of the petitioner from November, 2000 is admitted. The allegation of giving fictional breaks up-to 31.8.2007 has been specifically denied. It is alleged that the work was made available to the petitioner as per the requirement and availability of the funds from time to time as per mandays chart annexure-RII and R-III and that all the workers in the annexure R-III were senior to the petitioner who have since been regularized. It is further alleged that the disengagement of the workmen on the availability of the funds and the work was strictly in accordance with the policy of 'last come first go' and thus allegation of violation of Section 25-F, 25-G and 25-H of the Industrial Disputes Act has been specifically denied. Thus, relying upon the plea of reference of regularization of petitioner, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by the petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri V.S. Guleria, the then Executive Engineer, HPPWD (B&R) Division, Joginder Nagar as RW1, tendered Ex. RW1/A copy of letter dated 9th December, 2003, Ex. RW1/B regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D year-wise working days of daily wage Beldar and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 16.5.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the years September, 2000 to 31-08- 2007 is/was illegal and unjustified as alleged? OPP
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? OPP
3. Whether the claim petition is not maintainable in the present form as alleged? OPR
4. Whether the claim petition is bad for non-joinder of necessary parties as alleged? OPR

5. Whether the claim petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? OPR
6. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes
Issue No.2 : Discussed
Issue No.3 : No
Issue No.4 : No
Issue No.5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. November, 2000 is not in dispute. It is the admitted case of petitioner that he had worked since November, 2000 but he had been deliberately given fictional breaks by respondent so that he could not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own use to not come on his duty besides he willfully absented several times from it.

12. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent cannot be accepted that petitioner willfully absented from his duties as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties as absence from duty is serious misconduct, it is projected to be case as if petitioner came of his own and worked at his whims. The plea of petitioner, on the other hand remains that fictional breaks were deliberately given to him and that several other persons junior to petitioner namely Smt. Geeta Devi, Dalip Singh, Goutam Singh and Anil Kumar and others have been regularized by respondent who were actually not given fictional breaks at any point of time.

13. Perusal of mandays chart Ex. RW1/C would reveal that in the year 2000 petitioner had worked for 43 days, 181 days in 2001, 169 days in 2002, 175 days in 2003, 170 days in 2004, 170 days in 2005, 166.5 days in 2006, 232 days in 2007, 366 days in 2008, 365 days in 2009, 365 days in 2010, 365 days in 2011, 366 days in 2012, 360 days in 2013 and 365 days in 2014. It can be noticed that in the several years petitioner has worked for less than 240 days, whereas for other remaining years he had worked for more than 240 days. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2002, 2003 and 2004 except at serial nos. 7 & 8 who had joined earlier to petitioner whereas petitioner had joined in 2000. Since respondent had not disputed to have engaged petitioner in November, 2000, he ought to have been

regularized having continuously worked for about 8 years with requisite number of days required for regularization and on account of fictional break as stated above, which would show that other persons who had joined along-with him have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement but fictional breaks in no manner would affect or eclipse legitimate right of regularization in service of petitioner. However, petitioner has admitted in cross-examination that he had agricultural land and remained employed and as such it could not be stated with certainty that petitioner was not gainfully employed during the period of fictional breaks.

14. Stepping into the witness box as PW1, petitioner has sworn in detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 2000 to 2007 by giving fictional break whereas the persons junior to petitioner have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year as they had been invariably issued muster roll for whole of month in these years. In cross-examination, petitioner has admitted that he has been regularly provided with more than 240 days of work after 2007 which means the dispute is only for the years 2000 to 2007 as stated in the affidavit. It needs to be noticed that other co-workers working with petitioner or say who were junior were given muster roll for full month so that they completed 240 days in a year. RW1 Shri V.S. Guleria has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers who have been shown in the said seniority list were employed after the engagement of the petitioner except serial nos. 7&8. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 2000 who had not been issued any appointment letter but denied that petitioner had been deliberately given breaks in the years from 2000 to 2007 but he could not plead so as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty, any notice was issued for unauthorized absence and the version of RW1 that petitioner came and worked & go of his own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. Since absence from duty is serious misconduct, and there being nothing on record to show initiation of proceeding, plea set forth by respondent qua abandonment of job by petitioner intermittently merits rejection. As such, the plea of fictional break given to the petitioner from the year 2000 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well. Although, petitioner being in employment at the time of passing of award, being given fictional breaks as stated above is duly established but petitioner cannot be deprived of his legitimate right to seek seniority as well as continuity in service from his date of joining along-with other persons working with him. Thus, petitioner could not have been discriminated arbitrarily who has certainly been discriminated as stated in foregoing paras. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent during 2000 to 2007 was certainly illegal and unjustified which is manifestly in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** in the circumstances of the case. Issues are accordingly decided in part in favour of the petitioner and against the respondent.

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO. 4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case in claim petition as petitioner was initially appointed with respndent only PW1 has admitted in cross-examination that petitioner was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 5

17. Id. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 2000 to 2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, he come to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Id. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by Id. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, petitioner is held to be in continuous uninterrupted service with the respondent from the date of his initial engagement, the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of October, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 362/2014

Date of Institution : 16.12.2014

Date of decision : 27.10.2015

Shri Kishori Lal s/o Shri Lakhu Ram, r/o Village Patrain, P.O. Gangoti, Tehsil Joginder Nagar, District Mandi, H.P.

...Petitioner

Versus

The Executive Engineer, B&R Division, HPPWD Joginder Nagar, Distt. Mandi, H.P.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Kishori Lal, S/O Shri Lakhu Ram, R/O Village Patrain, P.O. Gangoti, Tehsil Joginder Nagar, District Mandi, H.P. during October 2001 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner was engaged as daily rated beldar by respondent w.e.f. 01.10.2001 in its National Highway Division, Joginder Nagar and later he (petitioner) worked with the respondent in the newly created HPPWD Division in 2004 but he was given fictional breaks from time to time from his initial engagement till 31.8.2007. It is alleged that he was issued muster rolls for 15 days in a month, though the work was available for the entire month but, his juniors namely Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishhori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal. were not given such breaks and they were allowed to complete 240 days in each calendar year and the above named juniors have now been regularized. It is alleged that the respondent has stopped giving fictional breaks to the petitioner from 01.9.2007 and thereafter, the petitioner has completed 240 days in each calendar year. Therefore, there has been violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for brevity). This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The petitioner thus has filed a demand notice with the labour department but matter could not be reconciled as the petitioner has prayed for giving him the benefit of seniority, regularization and back wages etc.

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections of maintainability, petition being bad for non- joinder of necessary parties and claim petition being bad on account of delay and laches. On merits, engagement of the petitioner from June, 2001 is admitted. The allegation of giving fictional breaks up-to 31.8.2007 has been specifically denied. It is alleged that the work was made available to the petitioner as per the requirement and availability of the funds from time to time as per mandays chart annexure-RII and R-III and that all the workers in the annexure R-III were senior to the petitioner who have since been regularized. It is further alleged that the disengagement of the workmen on the availability of the funds and the work was strictly in accordance with the policy of ‘last come first go’ and thus allegation of violation of Section 25-F, 25-G and 25-H of the Industrial Disputes Act has been

specifically denied. Thus, relying upon the plea of reference of regularization of petitioner, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by the petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri V.S. Guleria, the then Executive Engineer, HPPWD (B&R) Division, Joginder Nagar as RW1, tendered Ex. RW1/A copy of letter dated 9th December, 2003, Ex. RW1/B regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D year-wise working days of daily wage Beldar and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 16.5.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the years October, 2001 to 31-08-2007 is/was illegal and unjustified as alleged? *OPP*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? *OPP*
3. Whether the claim petition is not maintainable in the present form as alleged? *OPR*
4. Whether the claim petition is bad for non-joinder of necessary parties as alleged? *OPR*
5. Whether the claim petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? *OPR*

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes
 Issue No.2 : Discussed
 Issue No.3 : No
 Issue No.4 : No
 Issue No.5 : No

Relief: Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. June, 2001 is not in dispute. It is the admitted case of petitioner that he had worked since June, 2001 but he had been deliberately given fictional breaks by respondent so that he could not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own use to not come on his duty besides he willfully absented several times from it.

12. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent cannot be accepted that petitioner willfully absented from his duties as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties as absence from duty is serious misconduct, it is projected to be case as if petitioner came of his own and worked at his whims. The plea of petitioner, on the other hand remains that fictional breaks were deliberately given to him and that several other persons junior to petitioner namely Smt. Geeta Devi, Dalip Singh, Goutam Singh and Anil Kumar and others have been regularized by respondent who were actually not given fictional breaks at any point of time.

13. Perusal of mandays chart Ex. RW1/C would reveal that in the year 2001 petitioner had worked for 99 days, 149 days in 2002, 171 days in 2003, 142 days in 2004, 163 days in 2005, 146 days in 2006, 232 days in 2007, 366 days in 2008, 361 days in 2009, 331 days in 2010, 356 days in 2011, 300 days in 2012, and 365 days in 2013. It can be noticed that in the several years petitioner has worked for less than 240 days, whereas for other remaining years he had worked for more than 240 days. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2002, 2003 and 2004 except at serial nos. 3,6,7 & 10 who had joined earlier to petitioner whereas petitioner had joined in 2001. Since respondent had not disputed to have engaged petitioner in June, 2001, he ought to have been regularized having continuously worked for about 7 years with requisite number of days required for regularization and on account of fictional break as stated above, which would show that other persons who had joined along-with him have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement but fictional breaks in no manner would affect or eclipse legitimate right of regularization in service of petitioner. However, petitioner has admitted in cross-examination that he had agricultural land and remained employed and as such it could not be stated with certainty that petitioner was not gainfully employed during the period of fictional breaks.

14. Stepping into the witness box as PW1, petitioner has sworn in detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 2001 to 2007 by giving fictional break whereas the persons junior to petitioner have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year as they had been invariably issued muster roll for whole of month in these years. In cross-examination, petitioner has admitted that he has been regularly provided with more than 240 days

of work after 2007 which means the dispute is only for the years 2001 to 2007 as stated in the affidavit. It needs to be noticed that other co-workers working with petitioner or say who were junior were given muster roll for full month so that they completed 240 days in a year. RW1 Shri V.S. Guleria has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers who have been shown in the said seniority list were employed after the engagement of the petitioner except serial nos. 3,6,7 & 10. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 2001 who had not been issued any appointment letter but denied that petitioner had been deliberately given breaks in the years from 2001 to 2007 but he could not plead so as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty, any notice was issued for unauthorized absence and the version of RW1 that petitioner came and worked & go of his own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. Since absence from duty is serious misconduct, and there being nothing on record to show initiation of proceeding, plea set forth by respondent qua abandonment of job by petitioner intermittently merits rejection. As such, the plea of fictional break given to the petitioner from the year 2001 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well. Although, petitioner being in employment at the time of passing of award, being given fictional breaks as stated above is duly established but petitioner cannot be deprived of his legitimate right to seek seniority as well as continuity in service from his date of joining along-with other persons working with him. Thus, petitioner could not have been discriminated arbitrarily who has certainly been discriminated as stated in foregoing paras. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent during 2001 to 2007 was certainly illegal and unjustified which is manifestly in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** in the circumstances of the case. Issues are accordingly decided in part in favour of the petitioner and against the respondent.

ISSUE NO. 3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO. 4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case in claim petition as petitioner was initially appointed with respondent only PW1 has admitted in cross-examination that petitioner was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 5

17. Ld. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 2001 to 2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, he come to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by Ld. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, petitioner is held to be in continuous uninterrupted service with the respondent from the date of his initial engagement, the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement.

Accordingly, claim petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wages as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of October, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 369/2014

Date of Institution : 16.12.2014

Date of decision : 27.10.2015

Shri Nek Ram s/o Shri Bhadur Singh, r/o Village Bhajera, P.O. Drubbal, Tehsil Joginder Nagar, District Mandi, H.P. *...Petitioner*

Versus

The Executive Engineer, B&R Division, HPPWD Joginder Nagar, Distt. Mandi, H.P. *...Respondent*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Nek Ram, S/O Shri Bhadar Singh, R/O Village Bhajera, P.O. Drubbal, Tehsil Joginder Nagar, District Mandi, H.P. during October 1998 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the

Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner was engaged as daily rated beldar by respondent w.e.f. 01.10.1998 in its National Highway Division, Joginder Nagar and later he (petitioner) worked with the respondent in the newly created HPPWD Division in 2004 but he was given fictional breaks from time to time from his initial engagement till 31.8.2007. It is alleged that he was issued muster rolls for 15 days in a month, though the work was available for the entire month but, his juniors namely Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishhori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal. were not given suchm breaks and they were allowed to complete 240 days in each calendar year and the above named juniors have now been regularized. It is alleged that the respondent has stopped giving fictional breaks to the petitioner from 01.9.2007 and thereafter, the petitioner has completed 240 days in each calendar year. Therefore, there has been violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for brevity). This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The petitioner thus has filed a demand notice with the labour department but matter could not be reconciled as the petitioner has prayed for giving him the benefit of seniority, regularization and back wages etc.

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections of maintainability, petition being bad for non- joinder of necessary parties and claim petition being bad on account of delay and laches. On merits, engagement of the petitioner from November, 1998 is admitted. The allegation of giving fictional breaks up-to 31.8.2007 has been specifically denied. It is alleged that the work was made available to the petitioner as per the requirement and availability of the funds from time to time as per mandays chart annexure-RII and R-III and that all the workers in the annexure R-III were senior to the petitioner who have since been regularized. It is further alleged that the disengagement of the workmen on the availability of the funds and the work was strictly in accordance with the policy of 'last come first go' and thus allegation of violation of Section 25-F, 25-G and 25-H of the Industrial Disputes Act has been specifically denied. Thus, relying upon the plea of reference of regularization of petitioner, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by the petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri V.S. Guleria, the then Executive Engineer, HPPWD (B&R) Division, Joginder Nagar as RW1, tendered Ex. RW1/A copy of letter dated 9th December, 2003, Ex. RW1/B regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D year-wise working days of daily wage Beldar and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 16.5.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the year October, 1998 to 31-08-2007 is/was illegal and unjustified as alleged? OPP
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? OPP
3. Whether the claim petition is not maintainable in the present form as alleged? OPR
4. Whether the claim petition is bad for non-joinder of necessary parties as alleged? OPR
5. Whether the petition is bad on account of delay and laches on the part of the applicant as alleged? OPR

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes
 Issue No.2 : Discussed
 Issue No.3 : No
 Issue No.4 : No
 Issue No.5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. November, 1998 is not in dispute. It is the admitted case of petitioner that he had worked since November, 1998 but he had been deliberately given fictional breaks by respondent so that he could not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own use to not come on his duty besides he willfully absented several times from it.

12. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent cannot be accepted that petitioner willfully absented from his duties as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties as absence from duty is serious

misconduct, it is projected to be case as if petitioner came of his own and worked at his whims. The plea of petitioner, on the other hand remains that fictional breaks were deliberately given to him and that several other persons junior to petitioner namely Smt. Geeta Devi, Dalip Singh, Goutam Singh and Anil Kumar and others have been regularized by respondent who were actually not given fictional breaks at any point of time.

13. Perusal of mandays chart Ex. RW1/C would reveal that in the year 1998 petitioner had worked for 27 days, 45 days in 1999, 95 days in 2000, 176 days in 2001, 167 days in 2002, 169 days in 2003, 162 days in 2004, 159 days in 2005, 156 days in 2006, 229 days in 2007, 364 days in 2008, 365 days in 2009, 359 days in 2010, 359 days in 2011, 359 days in 2012, 359 days in 2013 and 359 days in 2014. It can be noticed that in the several years petitioner has worked for less than 240 days, whereas for other remaining years he had worked for more than 240 days. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 1999, 2000, 2002, 2003 and 2004 except at serial no. 7 who had joined earlier to petitioner whereas petitioner had joined in 1998. Since respondent had not disputed to have engaged petitioner in November, 1998, he ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and on account of fictional break as stated above, which would show that other persons who had joined along-with him have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement but fictional breaks in no manner would affect or eclipse legitimate right of regularization in service of petitioner. However, petitioner has admitted in cross-examination that he had agricultural land and remained employed and as such it could not be stated with certainty that petitioner was not gainfully employed during the period of fictional breaks.

14. Stepping into the witness box as PW1, petitioner has sworn in detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 1998 to 2007 by giving fictional break whereas the persons junior to petitioner have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year as they had been invariably issued muster roll for whole of month in these years. In cross-examination, petitioner has admitted that he has been regularly provided with more than 240 days of work after 2007 which means the dispute is only for the years 1998 to 2007 as stated in the affidavit. It needs to be noticed that other co-workers working with petitioner or say who were junior were given muster roll for full month so that they completed 240 days in a year. RW1 Shri V.S. Guleria has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers who have been shown in the said seniority list were employed after the engagement of the petitioner except serial nos. 7. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 1998 who had not been issued any appointment letter but denied that petitioner had been deliberately given breaks in the years from 1998 to 2007 but he could not plead so as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty, any notice was issued for unauthorized absence and the version of RW1 that petitioner came and worked & go of his own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. Since absence from duty is serious misconduct, and there being nothing on record to show initiation of proceeding, plea set forth by respondent qua abandonment of job by petitioner intermittently merits rejection. As

such, the plea of fictional break given to the petitioner from the year 1998 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well. Although, petitioner being in employment at the time of passing of award, being given fictional breaks as stated above is duly established but petitioner cannot be deprived of his legitimate right to seek seniority as well as continuity in service from his date of joining along-with other persons working with him. Thus, petitioner could not have been discriminated arbitrarily who has certainly been discriminated as stated in foregoing paras. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent during 1998 to 2007 was certainly illegal and unjustified which is manifestly in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** in the circumstances of the case. Issues are accordingly decided in part in favour of the petitioner and against the respondent.

ISSUE NO. 3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO. 4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case in claim petition as petitioner was initially appointed with respndent only PW1 has admitted in cross-examination that petitioner was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 5

17. Id. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 1998 to 2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, he come to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Id. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by Id. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the

principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, petitioner is held to be in continuous uninterrupted service with the respondent from the date of his initial engagement, the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of October, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 377/2014

Date of Institution : 16.12.2014

Date of decision : 27.10.2015

Smt. Bimla Devi w/o Shri Puran Chand, r/o Village Draman, P.O. Golwan, Tehsil Joginder Nagar, District Mandi, H.P. *...Petitioner*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt.Mandi, H.P. *....Respondent*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Smt. Bimla Devi, W/O Shri Puran Chand, R/O Village Draman, P.O. Golwan, Tehsil Joginder Nagar, District Mandi, H.P. during June, 1999 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed her statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner was engaged as daily rated beldar by respondent w.e.f. 06.06.1999 in its National Highway Division, Joginder Nagar and later she (petitioner) worked with the respondent in the newly created HPPWD Division in 2004 but she was given fictional breaks from time to time from her initial engagement till 31.8.2007. It is alleged that she was issued muster rolls for 15 days in a month, though the work was available for the entire month but, her juniors namely Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishhori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal. were not given such breaks and they were allowed to complete 240 days in each calendar year and the above named juniors have now been regularized. It is alleged that the respondent has stopped giving

fictional breaks to the petitioner from 01.9.2007 and thereafter, the petitioner has completed 240 days in each calendar year. Therefore, there has been violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for brevity). This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The petitioner thus has filed a demand notice with the labour department but matter could not be reconciled as the petitioner has prayed for giving her the benefit of seniority, regularization and back wages etc.

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections of maintainability, petition being bad for non- joinder of necessary parties and claim petition being bad on account of delay and laches. On merits, engagement of the petitioner from June, 1999 is admitted. The allegation of giving fictional breaks up-to 31.8.2007 has been specifically denied. It is alleged that the work was made available to the petitioner as per the requirement and availability of the funds from time to time as per mandays chart annexure-RII and R-III and that all the workers in the annexure R-III were senior to the petitioner who have since been regularized. It is further alleged that the disengagement of the workmen on the availability of the funds and the work was strictly in accordance with the policy of 'last come first go' and thus allegation of violation of Section 25-F, 25-G and 25-H of the Industrial Disputes Act has been specifically denied. Thus, relying upon the plea of reference of regularization of petitioner, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by the petitioner.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/ A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri V.S. Guleria, the then Executive Engineer, HPPWD (B&R) Division, Joginder Nagar as RW1, tendered Ex. RW1/A copy of letter dated 9th December, 2003, Ex. RW1/B regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D year-wise working days of daily wage Beldar and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 16.5.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the year June, 1999 to 31-08-2007 is/was illegal and unjustified as alleged?
OPP
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to?
OPP
3. Whether the claim petition is not maintainable in the present form as alleged?
OPR
4. Whether the claim petition is bad for non-joinder of necessary parties as alleged?
OPR

5. Whether the petition is bad on account of delay and laches on the part of the applicant as alleged. OPR

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes
Issue No.2 : Discussed
Issue No.3 : No
Issue No.4 : No
Issue No.5 : No

Relief: Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. June, 1999 is not in dispute. It is the admitted case of petitioner that she had worked since June, 1999 but she had been deliberately given fictional breaks by respondent so that she could not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as she of her own use to not come on her duty besides she willfully absented several times from it.

12. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent cannot be accepted that petitioner willfully absented from her duties as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for her unauthorized absence from her duties as absence from duty is serious misconduct, it is projected to be case as if petitioner came of her own and worked at her whims. The plea of petitioner, on the other hand remains that fictional breaks were deliberately given to her and that several other persons junior to petitioner namely Smt. Geeta Devi, Dalip Singh, Goutam Singh and Anil Kumar and others have been regularized by respondent who were actually not given fictional breaks at any point of time.

13. Perusal of mandays chart Ex. RW1/C would reveal that in the year 1999 petitioner had worked for 114 days, 204 days in 2000, 180 days in 2001, 167 days in 2002, 163 days in 2003, 139 days in 2004, 170 days in 2005, 164 days in 2006, 230 days in 2007, 359 days in 2008, 363 days in 2009, 357 days in 2010, 359 days in 2011, 359 days in 2012 and 365 days in 2013. It can be noticed that in the several years petitioner has worked for less than 240 days, whereas for other remaining years she had worked for more than 240 days. Thus, break in service being within a period of nine years from her termination was definitely a fictional break as in remaining years she had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 1999, 2000, 2002, 2003 and 2004 except at

serial no. 6 who had joined earlier to petitioner whereas petitioner had joined in June, 1999. Since respondent had not disputed to have engaged petitioner in June, 1999, she ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and there being no fictional break as stated above, which would show that other persons who had joined along-with her have been regularized but the petitioner has been deprived of her legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming her seniority and continuity in service from her initial engagement but fictional breaks in no manner would affect or eclipse legitimate right of regularization in service of petitioner. However, petitioner has admitted in cross-examination that she had agricultural land and remained employed and as such it could not be stated that certainty that petitioner was not gainfully employed during the period of fictional breaks.

14. Stepping into the witness box as PW1, petitioner has sworn in detailed affidavit under Order 18 Rule 4 CPC stipulating therein that she had been engaged and disengaged between 1999 to 2007 by giving fictional break whereas the persons junior to petitioner have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year as they had been invariably issued muster roll for whole of month in these years. In cross-examination, petitioner has admitted that she has been regularly provided with more than 240 days of work after 2007 which means the dispute is only for the years 1999 to 2007 as stated in the affidavit. It needs to be noticed that other co-workers working with petitioner or say who were junior were given muster roll for full month so that they completed 240 days in a year. RW1 Shri V.S. Guleria has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers who have been shown in the said seniority list were employed after the engagement of the petitioner except serial no. 6. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 1999 who had not been issued any appointment letter but denied that petitioner had been deliberately given breaks in the years from 1999 to 2007 but he could not plead so as no corresponding record has been produced by the respondent to establish that on absence of petitioner from her duty, any notice was issued for unauthorized absence and the version of RW1 that petitioner came and worked & go of her own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for her absence from duty at any point of time. Since absence from duty is serious misconduct, and there being nothing on record to show initiation of proceeding, plea set forth by respondent qua abandonment of job by petitioner intermittently merits rejection. As such, the plea of fictional break given to the petitioner from the year 1999 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well. Although, petitioner being in employment at the time of passing of award, being given fictional breaks as stated above is duly established but petitioner cannot be deprived of her legitimate right to seek seniority as well as continuity in service from her date of joining along-with other persons working with him. Thus, petitioner could not have been discriminated arbitrarily who has certainly been discriminated as stated in foregoing paras. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent during 1999 to 2007 was certainly illegal and unjustified which manifestly in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, she is to be given benefit of seniority and continuity in service **except back wages** in the circumstances of the case. Issues are accordingly decided in part in favour of the petitioner and against the respondent.

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO. 4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case in claim petition as petitioner was initially appointed with respndent only PW1 has admitted in cross-examination that petitioner was working with respondent although she earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 5

17. Id. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 1999 to 31.8.2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, she come to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Id. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by Id. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, it is held that the petitioner is held to be in continuous uninterrupted service with the respondent from the date of her initial engagement, the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and her seniority shall be reckoned from her initial date of engagement. Accordingly, claim petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. She shall, however, be considered for regularization by respondent at the time when her juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of October, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 378/2014

Date of Institution : 16.12.2014

Date of decision : 27.10.2015

Shri Babul Khan s/o Shri Jam Khan, r/o Village Kumharnoo, P.O. Khazoor, Tehsil Joginder
Nagar, District Mandi, H.P. ...Petitioner

Versus

The Executive Engineer, B&R Division, HPPWD Joginder Nagar, Distt. Mandi, H.P.

...Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Babul Khan, S/O Shri Jam Khan, R/O Village Kumharnoo, P.O. Khazoor, Tehsil Joginder Nagar, District Mandi, H.P. during October, 1998 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner was engaged as daily rated beldar by respondent w.e.f. 01.10.1998 in its National Highway Division, Joginder Nagar and later he (petitioner) worked with the respondent in the newly created HPPWD Division in 2004 but he was given fictional breaks from time to time from his initial engagement till 31.8.2007. It is alleged that he was issued muster rolls for 15 days in a month, though the work was available for the entire month but, his juniors namely Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishhori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal. were not given such breaks and they were allowed to complete 240 days in each calendar year and the above named juniors have now been regularized. It is alleged that the respondent has stopped giving fictional breaks to the petitioner from 01.9.2007 and thereafter, the petitioner has completed 240 days in each calendar year. Therefore, there has been violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for brevity). This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The petitioner thus has filed a demand notice with the labour department but matter could not be reconciled as the petitioner has prayed for giving him the benefit of seniority, regularization and back wages etc.

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections of maintainability, petition being bad for non- joinder of necessary parties and claim petition being bad on account of delay and laches. On merits, engagement of the petitioner from October, 1998 is admitted. The allegation of giving fictional breaks up-to 31.8.2007 has been specifically denied. It is alleged that the work was made available to the petitioner as per the requirement and availability of the funds from time to time as per mandays chart annexure-RII and R-III and that all the workers in the annexure R-III were senior to the petitioner who have since

been regularized. It is further alleged that the disengagement of the workmen on the availability of the funds and the work was strictly in accordance with the policy of 'last come first go' and thus allegation of violation of Section 25-F, 25-G and 25-H of the Industrial Disputes Act has been specifically denied. Thus, relying upon the plea of reference of regularization of petitioner, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by the petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri V.S. Guleria, the then Executive Engineer, HPPWD (B&R) Division, Joginder Nagar as RW1, tendered Ex. RW1/A copy of letter dated 9th December, 2003, Ex. RW1/B regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D year-wise working days of daily wage Beldar and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 16.5.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the year October, 1998 to 31-08-2007 is/was illegal and unjustified as alleged? *OPP*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? *OPP*
3. Whether the claim petition is not maintainable in the present form as alleged? *OPR*
4. Whether the claim petition is bad for non-joinder of necessary parties as alleged? *OPR*
5. Whether the petition is bad on account of delay and laches on the part of the applicant as alleged? *OPR*

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes
 Issue No.2 : Discussed
 Issue No.3 : No
 Issue No.4 : No
 Issue No.5 : No

Relief: Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. October, 1998 is not in dispute. It is the admitted case of petitioner that he had worked since October, 1998 but he had been deliberately given fictional breaks by respondent so that he could not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own use to not come on his duty besides he willfully absented several times from it.

12. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent cannot be accepted that petitioner willfully absented from his duties as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties as absence from duty is serious misconduct, it is projected to be case as if petitioner came of his own and worked at his whims. The plea of petitioner, on the other hand remains that fictional breaks were deliberately given to him and that several other persons junior to petitioner namely Smt. Geeta Devi, Dalip Singh, Goutam Singh and Anil Kumar and others have been regularized by respondent who were actually not given fictional breaks at any point of time.

13. Perusal of mandays chart Ex. RW1/C would reveal that in the year 1998 petitioner had worked for 77 days, 205 days in 1999, 191 days in 2000, 164 days in 2001, 152 days in 2002, 170 days in 2003, 161 days in 2004, 166 days in 2005, 159 days in 2006, 228 days in 2007, 341 days in 2008, 363 days in 2009, 363 days in 2010, 365 days in 2011, 366 days in 2012 and 365 days in 2013. It can be noticed that in the several years petitioner has worked for less than 240 days, whereas for other remaining years he had worked for more than 240 days. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 1999, 2000, 2002, 2003 and 2004 except at serial no. 6 who had joined earlier to petitioner whereas petitioner had joined in 1998. Since respondent had not disputed to have engaged petitioner in October, 1998, he ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and on account of fictional break as stated above, which would show that other persons who had joined along-with him have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement but fictional breaks in no manner would affect or eclipse legitimate right of regularization in service of petitioner. However, petitioner has admitted in cross-examination that he had agricultural land and remained employed and as such it could not be stated with certainty that petitioner was not gainfully employed during the period of fictional breaks.

14. Stepping into the witness box as PW1, petitioner has sworn in detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 1998 to

2007 by giving fictional break whereas the persons junior to petitioner have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year as they had been invariably issued muster roll for whole of month in these years. In cross-examination, petitioner has admitted that he has been regularly provided with more than 240 days of work after 2007 which means the dispute is only for the years 1998 to 2007 as stated in the affidavit. It needs to be noticed that other co-workers working with petitioner or say who were junior were given muster roll for full month so that they completed 240 days in a year. RW1 Shri V.S. Guleria has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers who have been shown in the said seniority list were employed after the engagement of the petitioner except serial nos. 6. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 1998 who had not been issued any appointment letter but denied that petitioner had been deliberately given breaks in the years from 1998 to 2007 but he could not plead so as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty, any notice was issued for unauthorized absence and the version of RW1 that petitioner came and worked & go of his own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. Since absence from duty is serious misconduct, and there being nothing on record to show initiation of proceeding, plea set forth by respondent qua abandonment of job by petitioner intermittently merits rejection. As such, the plea of fictional break given to the petitioner from the year 1998 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well. Although, petitioner being in employment at the time of passing of award, being given fictional breaks as stated above is duly established but petitioner cannot be deprived of his legitimate right to seek seniority as well as continuity in service from his date of joining along-with other persons working with him. Thus, petitioner could not have been discriminated arbitrarily who has certainly been discriminated as stated in foregoing paras. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent during 1998 to 2007 was certainly illegal and unjustified which is manifestly in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** in the circumstances of the case. Issues are accordingly decided in part in favour of the petitioner and against the respondent.

ISSUE NO. 3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO. 4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case in claim petition as petitioner was initially appointed with respndent only PW1 has admitted in cross-examination that petitioner was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 5

17. Ld. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 1998 to 2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, he come to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by Ld. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, petitioner is held to be in continuous uninterrupted service with the respondent from the date of his initial engagement, the breaks given

by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wages as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of October, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 380/2014

Date of Institution : 16.12.2014

Date of decision : 27.10.2015

Smt. Rumla Devi w/o Shri Amar Singh, r/o Village Lahrana, P.O. Panjalag, Tehsil Joginder Nagar, District Mandi, H.P. ...Petitioner

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P. ...Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Smt. Rumla Devi, W/O Shri Amar Singh, R/O Village Lahrana, P.O. Panjalag, Tehsil Joginder Nagar, District Mandi,

H.P. during June, 1999 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed her statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner was engaged as daily rated beldar by respondent w.e.f. 06.06.1999 in its National Highway Division, Joginder Nagar and later she (petitioner) worked with the respondent in the newly created HPPWD Division in 2004 but she was given fictional breaks from time to time from her initial engagement till 31.8.2007. It is alleged that she was issued muster rolls for 15 days in a month, though the work was available for the entire month but, her juniors namely Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishhori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal. were not given such breaks and they were allowed to complete 240 days in each calendar year and the above named juniors have now been regularized. It is alleged that the respondent has stopped giving fictional breaks to the petitioner from 01.9.2007 and thereafter, the petitioner has completed 240 days in each calendar year. Therefore, there has been violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for brevity). This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The petitioner thus has filed a demand notice with the labour department but matter could not be reconciled as the petitioner has prayed for giving her the benefit of seniority, regularization and back wages etc.

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections of maintainability, petition being bad for non- joinder of necessary parties and claim petition being bad on account of delay and laches. On merits, engagement of the petitioner from January, 1999 is admitted. The allegation of giving fictional breaks up-to 31.8.2007 has been specifically denied. It is alleged that the work was made available to the petitioner as per the requirement and availability of the funds from time to time as per mandays chart annexure-RII and R-III and that all the workers in the annexure R-III were senior to the petitioner who have since been regularized. It is further alleged that the disengagement of the workmen on the availability of the funds and the work was strictly in accordance with the policy of 'last come first go' and thus allegation of violation of Section 25-F, 25-G and 25-H of the Industrial Disputes Act has been specifically denied. Thus, relying upon the plea of reference of regularization of petitioner, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by the petitioner.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/ A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri V.S. Guleria, the then Executive Engineer, HPPWD (B&R) Division, Joginder Nagar as RW1, tendered Ex. RW1/A copy of letter dated 9th December, 2003, Ex. RW1/B regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D year-wise working days of daily wage Beldar and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 16.5.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the year June, 1999 to 31-08-2007 is/was illegal and unjustified as alleged?
OPP
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to?
OPP
3. Whether the claim petition is not maintainable in the present form as alleged?
OPR
4. Whether the claim petition is bad for non-joinder of necessary parties as alleged?
OPR
5. Whether the petition is bad on account of delay and laches on the part of the applicant as alleged.
OPR

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes
Issue No.2 : Discussed
Issue No.3 : No
Issue No.4 : No
Issue No.5 : No

Relief: Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. June, 1999 is not in dispute. It is the admitted case of petitioner that she had worked since June, 1999 but she had been deliberately given fictional breaks by respondent so that she could not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as she of her own use to not come on her duty besides she willfully absented several times from it.

12. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent cannot be accepted that petitioner willfully absented from her duties as there is nothing corresponding in evidence to show that any letter or intimation

was sent to petitioner for her unauthorized absence from her duties as absence from duty is serious misconduct, it is projected to be case as if petitioner came of her own and worked at her whims. The plea of petitioner, on the other hand remains that fictional breaks were deliberately given to her and that several other persons junior to petitioner namely Smt. Geeta Devi, Dalip Singh, Goutam Singh and Anil Kumar and others have been regularized by respondent who were actually not given fictional breaks at any point of time.

13. Perusal of mandays chart Ex. RW1/C would reveal that in the year 1999 petitioner had worked for 183 days, 216 days in 2000, 190 days in 2001, 164 days in 2002, 173 days in 2003, 169 days in 2004, 169 days in 2005, 159 days in 2006, 226 days in 2007, 364 days in 2008, 346 days in 2009, 356 days in 2010, 363 days in 2011, 357 days in 2012 and 361 days in 2013. It can be noticed that in the several years petitioner has worked for less than 240 days, whereas for other remaining years she had worked for more than 240 days. Thus, break in service being within a period of nine years from her termination was definitely a fictional break as in remaining years she had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 1999, 2000, 2002, 2003 and 2004 except at serial no. 6 who had joined earlier to petitioner whereas petitioner had joined in 1999. Since respondent had not disputed to have engaged petitioner in 1999, she ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and there being no fictional break as stated above, which would show that other persons who had joined along-with her have been regularized but the petitioner has been deprived of her legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming her seniority and continuity in service from her initial engagement but fictional breaks in no manner would affect or eclipse legitimate right of regularization in service of petitioner. However, petitioner has admitted in cross-examination that she had agricultural land and remained employed and as such it could not be stated that certainty that petitioner was not gainfully employed during the period of fictional breaks.

14. Stepping into the witness box as PW1, petitioner has sworn in detailed affidavit under Order 18 Rule 4 CPC stipulating therein that she had been engaged and disengaged between 1999 to 2007 by giving fictional break whereas the persons junior to petitioner have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year as they had been invariably issued muster roll for whole of month in these years. In cross-examination, petitioner has admitted that she has been regularly provided with more than 240 days of work after 2007 which means the dispute is only for the years 1999 to 2007 as stated in the affidavit. It needs to be noticed that other co-workers working with petitioner or say who were junior were given muster roll for full month so that they completed 240 days in a year. RW1 Shri V.S. Guleria has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers who have been shown in the said seniority list were employed after the engagement of the petitioner except serial no. 6. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 1999 who had not been issued any appointment letter but denied that petitioner had been deliberately given breaks in the years from 1999 to 2007 but he could not plead so as no corresponding record has been produced by the respondent to establish that on absence of petitioner from her duty, any notice was issued for unauthorized absence and the version of RW1 that petitioner came and worked & go of her own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for her absence from duty at any point of time. Since absence from duty is serious misconduct, and there being nothing on record to show initiation of proceeding, plea

set forth by respondent qua abandonment of job by petitioner intermittently merits rejection. As such, the plea of fictional break given to the petitioner from the year 1999 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well. Although, petitioner being in employment at the time of passing of award, being given fictional breaks as stated above is duly established but petitioner cannot be deprived of her legitimate right to seek seniority as well as continuity in service from her date of joining along-with other persons working with him. Thus, petitioner could not have been discriminated arbitrarily who has certainly been discriminated as stated in foregoing paras. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent during 1999 to 2007 was certainly illegal and unjustified which manifestly in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, she is to be given benefit of seniority and continuity in service **except back wages** in the circumstances of the case. Issues are accordingly decided in part in favour of the petitioner and against the respondent.

ISSUE NO. 3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO. 4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case in claim petition as petitioner was initially appointed with respondent only PW1 has admitted in cross-examination that petitioner was working with respondent although she earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 5

17. Id. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 1999 to 31.8.2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, she came to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Id. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by Id. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to

industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, it is held that the petitioner is held to be in continuous uninterrupted service with the respondent from the date of her initial engagement, the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and her seniority shall be reckoned from her initial date of engagement. Accordingly, claim petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. She shall, however, be considered for regularization by respondent at the time when her juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of October, 2015.

(K.K. Sharma)

*Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.*

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 381/2014

Date of Institution : 16.12.2014

Date of decision : 27.10.2015

Smt. Sheela Devi w/o Shri Prabh Dayal, r/o Village Salahan, P.O. Khaddar, Tehsil Joginder Nagar, District Mandi, H.P. *...Petitioner*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P. *...Respondent*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Smt. Sheela Devi, W/O Shri Prabh Dayal, R/O Village Salahan, P.O. Khaddar, Tehsil Joginder Nagar, District Mandi, H.P. during February, 2000 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed her statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner was engaged as daily rated beldar by respondent w.e.f. 06.01.2000 in its National Highway Division, Joginder Nagar and later she (petitioner) worked with the respondent in the newly created HPPWD Division in 2004 but she was given fictional breaks from time to time from her initial engagement till 31.8.2007. It is alleged that she was issued muster rolls for 15 days in a month, though the work was available for the entire month but, her juniors namely Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishhori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal. were not given such breaks and they were allowed to complete 240 days in each calendar year and the above named juniors have now been regularized. It is alleged that the respondent has stopped giving fictional breaks to the petitioner from 01.9.2007 and thereafter, the petitioner has completed 240

days in each calendar year. Therefore, there has been violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for brevity). This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The petitioner thus has filed a demand notice with the labour department but matter could not be reconciled as the petitioner has prayed for giving her the benefit of seniority, regularization and back wages etc.

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections of maintainability, petition being bad for non-joinder of necessary parties and claim petition being bad on account of delay and laches. On merits, engagement of the petitioner from February, 2000 is admitted. The allegation of giving fictional breaks up-to 31.8.2007 has been specifically denied. It is alleged that the work was made available to the petitioner as per the requirement and availability of the funds from time to time as per mandays chart annexure-RII and R-III and that all the workers in the annexure R-III were senior to the petitioner who have since been regularized. It is further alleged that the disengagement of the workmen on the availability of the funds and the work was strictly in accordance with the policy of 'last come first go' and thus allegation of violation of Section 25-F, 25-G and 25-H of the Industrial Disputes Act has been specifically denied. Thus, relying upon the plea of reference of regularization of petitioner, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by the petitioner.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/ A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri V.S. Guleria, the then Executive Engineer, HPPWD (B&R) Division, Joginder Nagar as RW1, tendered Ex. RW1/A copy of letter dated 9th December, 2003, Ex. RW1/B regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D year-wise working days of daily wage Beldar and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 16.5.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the year February, 2000 to 31-08- 2007 is/was illegal and unjustified as alleged? OPP
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? OPP
3. Whether the claim petition is not maintainable in the present form as alleged? OPR
4. Whether the claim petition is bad for non-joinder of necessary parties as alleged? OPR
5. Whether the petition is bad on account of delay and laches on the part of the applicant as alleged. OPR

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes
Issue No.2 : Discussed
Issue No.3 : No
Issue No.4 : No
Issue No.5 : No

Relief: Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. February, 2000 is not in dispute. It is the admitted case of petitioner that she had worked since February, 2000 but she had been deliberately given fictional breaks by respondent so that she could not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as she of her own use to not come on her duty besides she willfully absented several times from it.

12. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent cannot be accepted that petitioner willfully absented from her duties as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for her unauthorized absence from her duties as absence from duty is serious misconduct, it is projected to be case as if petitioner came of her own and worked at her whims. The plea of petitioner, on the other hand remains that fictional breaks were deliberately given to her and that several other persons junior to petitioner namely Smt. Geeta Devi, Dalip Singh, Goutam Singh and Anil Kumar and others have been regularized by respondent who were actually not given fictional breaks at any point of time.

13. Perusal of mandays chart Ex. RW1/C would reveal that in the year 2000 petitioner had worked for 198 days, 177 days in 2001, 171 days in 2002, 171 days in 2003, 169 days in 2004, 164 days in 2005, 160 days in 2006, 231 days in 2007, 360 days in 2008, 336 days in 2009, 353 days in 2010, 318 days in 2011, 334 days in 2012 and 356 days in 2013. It can be noticed that in the several years petitioner has worked for less than 240 days, whereas for other remaining years she had worked for more than 240 days. Thus, break in service being within a period of nine years from her termination was definitely a fictional break as in remaining years she had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2002, 2003 and 2004 except at serial nos. 3,6,7 and 10 who had joined earlier to petitioner whereas petitioner had joined in 2000. Since respondent had not disputed to have engaged

petitioner in 2000, she ought to have been regularized having continuously worked for about 8 years with requisite number of days required for regularization and there being no fictional break as stated above, which would show that other persons who had joined along-with her have been regularized but the petitioner has been deprived of her legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming her seniority and continuity in service from her initial engagement but fictional breaks in no manner would affect or eclipse legitimate right of regularization in service of petitioner. However, petitioner has admitted in cross-examination that she had agricultural land and remained employed and as such it could not be stated that certainty that petitioner was not gainfully employed during the period of fictional breaks.

14. Stepping into the witness box as PW1, petitioner has sworn in detailed affidavit under Order 18 Rule 4 CPC stipulating therein that she had been engaged and disengaged between 2000 to 2007 by giving fictional break whereas the persons junior to petitioner have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year as they had been invariably issued muster roll for whole of month in these years. In cross-examination, petitioner has admitted that she has been regularly provided with more than 240 days of work after 2007 which means the dispute is only for the years 2000 to 2007 as stated in the affidavit. It needs to be noticed that other co-workers working with petitioner or say who were junior were given muster roll for full month so that they completed 240 days in a year. RW1 Shri V.S. Guleria has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers who have been shown in the said seniority list were employed after the engagement of the petitioner except serial no. 3,6,7 & 10. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 2000 who had not been issued any appointment letter but denied that petitioner had been deliberately given breaks in the years from 2000 to 2007 but he could not plead so as no corresponding record has been produced by the respondent to establish that on absence of petitioner from her duty, any notice was issued for unauthorized absence and the version of RW1 that petitioner came and worked & go of her own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for her absence from duty at any point of time. Since absence from duty is serious misconduct, and there being nothing on record to show initiation of proceeding, plea set forth by respondent qua abandonment of job by petitioner intermittently merits rejection. As such, the plea of fictional break given to the petitioner from the year 2000 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well. Although, petitioner being in employment at the time of passing of award, being given fictional breaks as stated above is duly established but petitioner cannot be deprived of her legitimate right to seek seniority as well as continuity in service from her date of joining along-with other persons working with him. Thus, petitioner could not have been discriminated arbitrarily who has certainly been discriminated as stated in foregoing paras. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent during 2000 to 2007 was certainly illegal and unjustified which manifestly in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, she is to be given benefit of seniority and continuity in service **except back wages** in the circumstances of the case. Issues are accordingly decided in part in favour of the petitioner and against the respondent.

ISSUE NO. 3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what

manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO. 4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case in claim petition as petitioner was initially appointed with respondent only PW1 has admitted in cross-examination that petitioner was working with respondent although she earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 5

17. Ld. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 2000 to 31.8.2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, she came to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by Ld. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh**

vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, it is held that the petitioner is held to be in continuous uninterrupted service with the respondent from the date of her initial engagement, the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and her seniority shall be reckoned from her initial date of engagement. Accordingly, claim petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. She shall, however, be considered for regularization by respondent at the time when her juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of October, 2015.

(K.K. Sharma)

Presiding Judge,

Labour Court-cum-Industrial

Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 386/2014

Date of Institution : 16.12.2014

Date of decision : 27.10.2015

Shri Dan Singh s/o Shri Sudama Ram, r/o V.P.O. Khaddar, Tehsil Joginder Nagar, District Mandi, H.P. ...Petitioner

Versus

The Executive Engineer, B&R Division, HPPWD Joginder Nagar, Distt. Mandi, H.P. ...Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Dan Singh, S/O Shri Sudama Ram, R/O V.P.O. Khaddar, Tehsil Joginder Nagar, District Mandi, H.P. during September 1998 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D. Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner was engaged as daily rated beldar by respondent w.e.f. 02.09.1998 in its National Highway Division, Joginder Nagar and later he (petitioner) worked with the respondent in the newly created HPPWD Division in 2004 but he was given fictional breaks from time to time from his initial engagement till 31.8.2007. It is alleged that he was issued muster rolls for 15 days in a month, though the work was available for the entire month but, his juniors namely Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishhori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal. were not given such breaks and they were allowed to complete 240 days in each calendar year and the above named juniors have now been regularized. It is alleged that the respondent has stopped giving fictional breaks to the petitioner from 01.9.2007 and thereafter, the petitioner has completed 240 days in each calendar year. Therefore, there has been violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for brevity). This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The petitioner thus has filed a demand notice with the labour department but matter could not be reconciled as the petitioner has prayed for giving him the benefit of seniority, regularization and back wages etc.

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections of maintainability, petition being bad for non- joinder of necessary parties and claim petition being bad on account of delay and laches. On merits, engagement of the petitioner from October, 1998 is admitted. The allegation of giving fictional breaks up-to 31.8.2007 has been specifically denied. It is alleged that the work was made available to the petitioner as per the requirement and availability of the funds from time to time as per mandays chart annexure-RII and R-III and that all the workers in the annexure R-III were senior to the petitioner who have since

been regularized. It is further alleged that the disengagement of the workmen on the availability of the funds and the work was strictly in accordance with the policy of 'last come first go' and thus allegation of violation of Section 25-F, 25-G and 25-H of the Industrial Disputes Act has been specifically denied. Thus, relying upon the plea of reference of regularization of petitioner, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by the petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri V.S. Guleria, the then Executive Engineer, HPPWD (B&R) Division, Joginder Nagar as RW1, tendered Ex. RW1/A copy of letter dated 9th December, 2003, Ex. RW1/B regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D year-wise working days of daily wage Beldar and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 16.5.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the year September, 1998 to 31-08- 2007 is/was illegal and unjustified as alleged? *OPP*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? *OPP*
3. Whether the claim petition is not maintainable in the present form as alleged? *OPR*
4. Whether the claim petition is bad for non-joinder of necessary parties as alleged? *OPR*
5. Whether the petition is bad on account of delay and laches on the part of the applicant as alleged? *OPR*

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes
 Issue No.2 : Discussed
 Issue No.3 : No
 Issue No.4 : No
 Issue No.5 : No

Relief: Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS**ISSUES NO. 1 AND 2**

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. October, 1998 is not in dispute. It is the admitted case of petitioner that he had worked since October, 1998 but he had been deliberately given fictional breaks by respondent so that he could not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own use to not come on his duty besides he willfully absented several times from it.

12. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent cannot be accepted that petitioner willfully absented from his duties as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties as absence from duty is serious misconduct, it is projected to be case as if petitioner came of his own and worked at his whims. The plea of petitioner, on the other hand remains that fictional breaks were deliberately given to him and that several other persons junior to petitioner namely Smt. Geeta Devi, Dalip Singh, Goutam Singh and Anil Kumar and others have been regularized by respondent who were actually not given fictional breaks at any point of time.

13. Perusal of mandays chart Ex. RW1/C would reveal that in the year 1998 petitioner had worked for 84 days, 169 days in 1999, 218 days in 2000, 177 days in 2001, 114 days in 2002, 12 days in 2003, 170 days in 2004, 168 days in 2005, 152 days in 2006, 232 days in 2007, 362 days in 2008, 362 days in 2009, 349 days in 2010, 342 days in 2011 and 338 days in 2012. It can be noticed that in the several years petitioner has worked for less than 240 days, whereas for other remaining years he had worked for more than 240 days. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 1999, 2000, 2002, 2003 and 2004 except at serial no. 6 who had joined earlier to petitioner whereas petitioner had joined in 1998. Since respondent had not disputed to have engaged petitioner in October, 1998, he ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and on account of fictional break as stated above, which would show that other persons who had joined along-with him have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement but fictional breaks in no manner would affect or eclipse legitimate right of regularization in service of petitioner. However, petitioner has admitted in cross-examination that he had agricultural land and remained employed and as such it could not be stated with certainty that petitioner was not gainfully employed during the period of fictional breaks.

14. Stepping into the witness box as PW1, petitioner has sworn in detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 1998 to 2007 by giving fictional break whereas the persons junior to petitioner have been continuously

engaged by department for the whole year who had completed more than 240 days in a calendar year as they had been invariably issued muster roll for whole of month in these years. In cross-examination, petitioner has admitted that he has been regularly provided with more than 240 days of work after 2007 which means the dispute is only for the years 1998 to 2007 as stated in the affidavit. It needs to be noticed that other co-workers working with petitioner or say who were junior were given muster roll for full month so that they completed 240 days in a year. RW1 Shri V.S. Guleria has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers who have been shown in the said seniority list were employed after the engagement of the petitioner except serial nos. 6. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 1998 who had not been issued any appointment letter but denied that petitioner had been deliberately given breaks in the years from 1998 to 2007 but he could not plead so as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty, any notice was issued for unauthorized absence and the version of RW1 that petitioner came and worked & go of his own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. Since absence from duty is serious misconduct, and there being nothing on record to show initiation of proceeding, plea set forth by respondent qua abandonment of job by petitioner intermittently merits rejection. As such, the plea of fictional break given to the petitioner from the year 1998 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well. Although, petitioner being in employment at the time of passing of award, being given fictional breaks as stated above is duly established but petitioner cannot be deprived of his legitimate right to seek seniority as well as continuity in service from his date of joining along-with other persons working with him. Thus, petitioner could not have been discriminated arbitrarily who has certainly been discriminated as stated in foregoing paras. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent during 1998 to 2007 was certainly illegal and unjustified which is manifestly in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** in the circumstances of the case. Issues are accordingly decided in part in favour of the petitioner and against the respondent.

ISSUE NO. 3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO. 4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case in claim petition as petitioner was initially appointed with respondent only PW1 has admitted in cross-examination that petitioner was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 5

17. Ld. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 1998 to 2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, he come to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by Ld. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, petitioner is held to be in continuous uninterrupted service with the respondent from the date of his initial engagement, the breaks given

by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wages as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of October, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 388/2014

Date of Institution : 16.12.2014

Date of decision : 27.10.2015

Shri Dumnu Ram s/o Shri Gaj Ram, r/o V.P.O. Tullah, Tehsil Joginder Nagar, District Mandi, H.P. ...Petitioner

Versus

The Executive Engineer, B&R Division, HPPWD Joginder Nagar, Distt. Mandi, H.P. ...Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Dumnu Ram, S/O Shri Gaj Ram, R/O V.P.O. Tullah, Tehsil Joginder Nagar, District Mandi, H.P. during February,

2002 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner was engaged as daily rated beldar by respondent w.e.f. 01.2.2002 in its National Highway Division, Joginder Nagar and later he (petitioner) worked with the respondent in the newly created HPPWD Division in 2004 but he was given fictional breaks from time to time from his initial engagement till 31.8.2007. It is alleged that he was issued muster rolls for 15 days in a month, though the work was available for the entire month but, his juniors namely Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishhori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal. were not given such breaks and they were allowed to complete 240 days in each calendar year and the above named juniors have now been regularized. It is alleged that the respondent has stopped giving fictional breaks to the petitioner from 01.9.2007 and thereafter, the petitioner has completed 240 days in each calendar year. Therefore, there has been violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for brevity). This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The petitioner thus has filed a demand notice with the labour department but matter could not be reconciled as the petitioner has prayed for giving him the benefit of seniority, regularization and back wages etc.

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections of maintainability, petition being bad for non- joinder of necessary parties and claim petition being bad on account of delay and laches. On merits, engagement of the petitioner from February, 2002 is admitted. The allegation of giving fictional breaks up-to 31.8.2007 has been specifically denied. It is alleged that the work was made available to the petitioner as per the requirement and availability of the funds from time to time as per mandays chart annexure-RII and R-III and that all the workers in the annexure R-III were senior to the petitioner who have since been regularized. It is further alleged that the disengagement of the workmen on the availability of the funds and the work was strictly in accordance with the policy of 'last come first go' and thus allegation of violation of Section 25-F, 25-G and 25-H of the Industrial Disputes Act has been specifically denied. Thus, relying upon the plea of reference of regularization of petitioner, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by the petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri V.S. Guleria, the then Executive Engineer, HPPWD (B&R) Division, Joginder Nagar as RW1, tendered Ex. RW1/A copy of letter dated 9th December, 2003, Ex. RW1/B regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D year-wise working days of daily wage Beldar and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 16.5.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the years February, 2002 to 31-08- 2007 is/was illegal and unjustified as alleged? *OPP*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? *OPP*
3. Whether the claim petition is not maintainable in the present form as alleged? *OPR*
4. Whether the claim petition is bad for non-joinder of necessary parties as alleged? *OPR*
5. Whether the claim petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? *OPR*

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes
Issue No.2 : Discussed
Issue No.3 : No
Issue No.4 : No
Issue No.5 : No

Relief: Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. February, 2002 is not in dispute. It is the admitted case of petitioner that he had worked since February, 2002 but he had been deliberately given fictional breaks by respondent so that he could not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own use to not come on his duty besides he willfully absented several times from it.

12. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent cannot be accepted that petitioner willfully absented from his duties as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties as absence from duty is serious misconduct, it is projected to be case as if petitioner came of his own and worked at his whims. The plea of petitioner, on the other hand remains that fictional breaks were deliberately given to him and that several other persons junior to petitioner namely Smt. Geeta Devi, Dalip Singh, Goutam Singh and Anil Kumar and others have been regularized by respondent who were actually not given fictional breaks at any point of time.

13. Perusal of mandays chart Ex. RW1/C would reveal that in the year 2002 petitioner had worked for 90 days, 8 days in 2003, 154 days in 2004, 165 days in 2005, 138 days in 2006, 206 days in 2007, 326 days in 2008, 314 days in 2009, 345 days in 2010, 340 days in 2011, 348 days in 2012 and 350 days in 2013. It can be noticed that in the several years petitioner has worked for less than 240 days, whereas for other remaining years he had worked for more than 240 days. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2002, 2003 and 2004 except at serial nos. 3,6,7 and 10 who had joined earlier to petitioner whereas petitioner had joined in 2002. Since respondent had not disputed to have engaged petitioner in February, 2002, he ought to have been regularized having continuously worked for about 6 years with requisite number of days required for regularization and on account of fictional break as stated above, which would show that other persons who had joined along-with him have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement but fictional breaks in no manner would affect or eclipse legitimate right of regularization in service of petitioner. However, petitioner has admitted in cross-examination that he had agricultural land and remained employed and as such it could not be stated with certainty that petitioner was not gainfully employed during the period of fictional breaks.

14. Stepping into the witness box as PW1, petitioner has sworn in detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 2002 to 2007 by giving fictional break whereas the persons junior to petitioner have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year as they had been invariably issued muster roll for whole of month in these years. In cross-examination, petitioner has admitted that he has been regularly provided with more than 240 days of work after 2007 which means the dispute is only for the years 2002 to 2007 as stated in the affidavit. It needs to be noticed that other co-workers working with petitioner or say who were junior were given muster roll for full month so that they completed 240 days in a year. RW1 Shri V.S. Guleria has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers who have been shown in the said seniority list were employed after the engagement of the petitioner except serial nos. 3,6,7 and 10. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25- B of the Act. He has admitted that petitioner has been engaged in the year 2002 who had not been issued any appointment letter but denied that petitioner had been deliberately given breaks in the years from 2002 to 2007 but he could not plead so as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty, any notice was issued for unauthorized absence and the version of RW1 that petitioner came and worked & go of his own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has

admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. Since absence from duty is serious misconduct, and there being nothing on record to show initiation of proceeding, plea set forth by respondent qua abandonment of job by petitioner intermittently merits rejection. As such, the plea of fictional break given to the petitioner from the year 2002 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well. Although, petitioner being in employment at the time of passing of award, being given fictional breaks as stated above is duly established but petitioner cannot be deprived of his legitimate right to seek seniority as well as continuity in service from his date of joining along-with other persons working with him. Thus, petitioner could not have been discriminated arbitrarily who has certainly been discriminated as stated in foregoing paras. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent during 2002 to 2007 was certainly illegal and unjustified which is manifestly in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** in the circumstances of the case. Issues are accordingly decided in part in favour of the petitioner and against the respondent.

ISSUE NO. 3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO. 4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case in claim petition as petitioner was initially appointed with respondent only PW1 has admitted in cross-examination that petitioner was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 5

17. Id. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 2002 to 2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, he came to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Id. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by Id. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the

delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors.**, 2005 (1) **Himachal Law Journal** 248, there was a delay of 12 years. In **Ramesh Chand vs. Union of India**, CWP No. 812 of 2000, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr.** 2008 (1) **SLJ (H.P.)** 425, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors**, AIR 1964 SC 752, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another**, (1999) 6 **SCC** 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, petitioner is held to be in continuous uninterrupted service with the respondent from the date of his initial engagement, the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of October, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
 INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 233/2012

Date of Institution : 01.05.2012

Date of Decision : 27.10.2015

Shri Dot Ram s/o Shri Jagar Nath, r/o Village Seogi, P.O. Bari, Tehsil and District Kullu,
 H.P. ...Petitioner

Versus

The Project Manager, A.D. Hydro Power Limited, Site and Registered Office, Prini, Tehsil
 Manali, District Kullu, H.P. ...Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. D.S. Katoch, Adv.
 For the Respondent : Sh. Anuj Sharma, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the termination of services of Shri Dot Ram S/O Shri Jagar Nath, Village Seogi, P.O. Bari, Tehsil and District Kullu, H.P. by the Project Manager, A.D. Hydro Power Limited, Site and Registered Office, Prini, Tehsil Manali, District Kullu, H.P. w.e.f. 19-08-2010 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what amount of back wages, past service benefits, seniority and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition reveal that petitioner was working as Operator/Machine in the mechanical department of Abir Infrastructure consisted in Parvati Valley in District Kullu, H.P. on a monthly salary of Rs.5,198/- plus other allowances. The petitioner claims that he was selected and offered a sum of Rs.1,00,000/- per annum for which employment letter no.ADHPL/HR/2010-11 dated 01.7.2010 was issued by respondent preceded by a notice to claimant/petitioner from District Employment Office Kullu with regard to offer of salary and job opportunity with M/s. A.D. Hydro Power Ltd.. After receipt of letter from respondent stated above claimant/petitioner also notified the same to District Employment Office Kullu for further

necessary action and in pursuance to above stated formalities, petitioner had joined on 2nd July, 2010 who continued to work for 38 days but thereafter he was not allowed to enter the project area for several days in pursuance to direction issued by the respondent to the security staff. The grievance of petitioner remains that he was not allowed to enter into premises of the project however he could manage to enter into premises on 8.9.2010 when Shri S.K. Chauhan, Head (HR) of respondent got some papers signed from him and told that petitioner had left the job voluntarily. The petitioner further claims that he issued a notice on 20.8.2010 but there was no response from respondent due to which petitioner approached Labour-cum-Conciliation Officer on 14.9.2010 who had issued notices to respondents. Respondent thereafter filed reply to application of the claimant/petitioner and thereafter rejoinder was also filed by the claimant/petitioner but Labour-cum-Conciliation Officer failed to settle the dispute between the parties and therefore on failure of conciliation proceedings the matter was referred to appropriate govt. for making reference to this Court for redressal of the grievance of the petitioner. Thus, alleging his termination to be illegal and arbitrary, petitioner has sought relief in the shape of work with the respondent and that period for which petitioner had not been allowed to enter into premises of the respondent company be also treated as days of employment on duties for the purpose of obtaining salary under the package and to any other relief the petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of locus standi, application being not maintainable and that the appointment of petitioner was purely on contractual basis. On merits stated that services of petitioner had been hired on fixed term of probation for six months but due to his inefficiency and poor performance upto the mark the respondent had invoke **clause 5** of the appointment letter dated 19.8.2010 which provided that the services of the petitioner can be terminated on probation. Due to careless performance of duties and responsibilities assigned to him by the management of respondent company constrained to terminate the services of the petitioner on 19.8.2010 and that termination letter of the services of petitioner was stated to have been despatched as by registered post as the petitioner refused to receive the same along-with full and final settlement amount of Rs.11,364/-. Respondent also denied that several documents were got signed from petitioner. Thus, termination of the services of the petitioner could not be stated to be malafide or illegal rather due to negligent and careless approach of the petitioner towards his duties, his services had terminated by invoking Clause 5 of the appointment letter. Accordingly, by filing joint reply respondent has sought dismissal of claim petition.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PA copy of letter dated 1.7.2010, Mark -A and Mark-B copies of letters and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Birendra Prakash Pokhriyal as RW1 tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B copy of extracts of minutes of meeting, Ex RW1/C copy of letter dated 19.8.2010 regarding termination during the probation period, Ex. RW1/D copy of letter dated 10th July, 2010, Ex. RW1/E copy of cheque amounting to Rs.11,364/-, Ex. RW1/F copy of letter dated 19.8.2010, Ex. RW1/G copy of postal receipt and closed the evidence.

7. I have heard the ld. counsel representing for the parties, gone through records of the case carefully.

8. From the contentions raised, following issues were framed by my ld. Predecessor on 07.11.2012 for determination:

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 19.8.2010 is illegal and unjustified as alleged? *OPP*
 2. Whether the petitioner has the locus standi to sue? *OPP*
 3. Whether the petition is not maintainable in the present form? *OPR*
 4. Relief.
9. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No

Issue No.2 : No

Issue No.3 : Yes

Relief. : Claim petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

10. Admittedly, claimant/petitioner was employed as machine operator on probation period of six months on monthly salary of Rs.3600/- per month plus perks which were linked with actual performance of the claimant vide letter no. ADHPL/APLTR/HR/2010-11 dated 10th July, 2010. It is equally not in dispute that the services of petitioner had been terminated by the respondent by issuing letter dated 19.8.2010 invoking Clause no.5 of the appointment letter issued in favour of claimant/petitioner. It is equally manifest from pleadings and evidence on record that petitioner could work within the probation period for about 38 days only. The grievance of the petitioner remains that his services had been terminated arbitrarily with malafide intention by the respondent whereas the case of the respondent on the other hand remained that during probation period, due to inefficiency in work and unsatisfactory service the management of respondent company was terminated the services of petitioner by invoking Clause/para 5 of appointment letter issued in his favour. The case of respondent also remains that due to inefficiency of the petitioner his services have been terminated who was handed over termination letter dated 19.8.2010 in office but petitioner refused to receive the same in presence of the other officers of the company due to which termination order was posted on 20.8.2010 through registered post sending there that a cheque amounting to Rs.11,364/- which was refused to be received by the claimant/petitioner. However, as per plea of respondent the claimant/petitioner was entitled to receive full and final settlement of dues Rs.11,364/-.

11. Ld. counsel for the respondent has relied upon the judgment of Hon'ble High Court of Delhi titled as **Raju Kapoor vs. Management of M/s. Janta Coop. Bank** reported in **2013 LLR 839** in which the Hon'ble High Court of Delhi categorically held that a probationer even if he has completed more than 240 days of service has no right to have permanency. It has been held that termination of such probationer would not amount to either illegal retrenchment or termination. Ld. counsel for the respondent had further relied upon another judgment of Hon'ble High Court of H.P. reported in **2004 (2) Shim. LC 262** titled as **Vinod Kumar Walia vs. Presiding Judge, Labour Court and Anr.** in which the Hon'ble High Court of H.P. has observed that if the performance of the petitioner was not found satisfactory and suitable for confirmation, the order could not be stated to be either being stigmatic or punitive as it is an order of termination simplicitor. In the aforesaid

judgment the Hon'ble High Court of H.P. has relied upon the judgments of the Hon'ble Apex Court titled as **Purshotam Lal Dhingra vs. Union of India** reported in **AIR 1958 SC 36** and in **Shamsher Singh vs. State of Punjab** reported in **AIR 1974 SC 2192**. Reliance has also been placed on judgment reported in **AIR 1999 SC 983** titled as **Dipti Prakash Banerjee vs. Satyendra Nath Bose National Centre for Basic Science, Calcutta** in which the Hon'ble Apex Court has held that termination of probationer's service if motivated by certain allegations tantamounting to misconduct but not forming foundation of a simple order of termination cannot be termed punitive and hence would be valid. Applying the ratio of the above said judgments in particular of **AIR 1999 SC (supra)** it may not be erroneous to conclude here that claimant/petitioner was removed from service on probation as he was found inefficient or was not performing his duties as per expectations of the respondent management. Even while issuing termination letter dated 19th August, 2010 Ex. RW1/F, the respondent management has invoked Clause 5 of appointment letter. Equally important to mention here that claimant/petitioner has not disputed issuance of appointment letter dated 10.7.2010 Ex. RW1/D and the Clause 5 of the said letter is reproduced below for reference:

"During the probation period, your services with the company are terminable by either party by giving 15 days written notice or 15 days CTC in lieu of notice thereof (which will include Basic, HRA and MGB). Either party need not assign any reason for such termination".

Thus, it is apparent from the language of the Clause 5 of the appointment letter that no reason was assigned or was required to be assigned on the either of the parties, thus, respondent management had purely invoked clause 5 terminating the services without assigning any reason. Thus, such termination would not at all tantamount to punitive with stigma in any manner. That being so, petitioner could not challenge the action of the respondent in terminating his service as the respondent has acted within the ambit of agreement/appointment letter of the petitioner.

12. Stepping into witness box as PW1 petitioner had sworn in affidavit Ex. PW1/A reiterating the contents as maintained in the claim petition. Cross-examination of the petitioner reveals that appointment letter Ex. RW1/D that his signature exists in read circle the petitioner made futile attempt by stating that his signature had been obtained on the last page in August, 2010. He has admitted that he had signed documents after reading and understanding its contents. In so far as the claim of the petitioner that he was not allowed to enter into premises at the instance of one Shri S.K. Chauhan does not inspire confidence. He has denied that he refused to receive full and final payment but refused to receive the same even registered letter along-with cheque of Rs.11,364/-. It becomes abundantly clear that petitioner was not accepting termination order and had made futile attempt to justify his action by stating that he was not allowed to enter into premises.

13. Repudiating the evidence of petitioner, RW1 Shri Birendra Prakash Pokhriyal, Authorized Signatory of respondent company has supported the case of the petitioner on the point of his appointment as operator mechanical on fixed term contractual basis for a period of six months, commencing from July, 2010 as per terms and conditions stipulated in appointment letter dated 10.7.2010. It is also evident from affidavit of RW1 that before terminating the services of the petitioner, he was repeatedly advised/directed by the officials of respondent to perform his job responsibilities carefully and honestly to the satisfaction of the respondent management but despite repeated directions failed to perform employer's satisfaction, there being no alternative except to terminate his services by issuing termination letter but he refused to receive and therefore, the termination letter had been sent vide registered post on 20.8.2010 along-with full and final dues amounting to Rs.11,364/- vide cheque no. 023663 dated 19.8.2010 of State Bank of India to which

the petitioner was still entitled to receive. This witness has although admitted in cross-examination that he himself did not supervise of the work of petitioner but this admission could not be interpreted in favour of the petitioner as RW1 has been authorized to represent management who has also revealed that he was Manager HR. RW1 has stated that work and conduct of the petitioner was looked after by one Shri S.K. Chauhan who has not been examined although RW1 has admitted that no inquiry had been conducted before terminating his service which was not required petitioner being on probation. The appointment letter issued to the petitioner clearly stipulated termination of service by either party by giving 15 days written notice without assigning any reasons. Thus, when respondent was not required to assign any reason before terminating service of petitioner in view of specific stipulation in the appointment letter, no illegality and invalidity was committed by the respondent management in terminating the services of the petitioner during probation period which it can be done legitimately under the law petitioner could not be stated to have been illegally terminated. Accordingly, issue in hand is answered in negative in favour of the respondent and against the petitioner.

ISSUE NO. 2

14. The Id. counsel for the respondent has raised the objection on the locus standi of the petitioner to sue but as the petitioner was employee of respondent company whose services have been terminated he could legitimately challenge the action of the respondent management he had succeeded that the action of respondent was illegal and unjustified. Thus, it cannot be stated that petitioner has no locus standi to sue respondent company. Issue in hand is answered in negative in favour of petitioner and against the respondent.

ISSUE NO. 3

15. This issue was not pressed by Id. counsel for the respondent but it is evident from findings and foregoing paras wherein it is averred that the services of the petitioner were terminated by issuance of letter dated 20.8.2010 and that cheque amounting to Rs.11,364/- was also despatched along-with the termination letter as full and final settlement which has not received by the petitioner. Since in reference received from appropriate government there was no stipulation with regard to Rs.11,364/- to be paid to petitioner, no direction can be passed however after acknowledging its liability respondent/management is at liberty to remit the amount aforesaid to petitioner. As such, when the petitioner was removed from service, it could not be stated to be wrong, illegal and unjustified and hence, the petition is held to be not maintainable. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

RELIEF

16. As a sequel to my findings on the issue nos.1 to 3, claim petition is dismissed, leaving the parties to bear their own costs.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.
Announced in the open Court today this 27th day of October, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 154/2013

Date of Institution : 09.09.2013

Date of Decision : 29.10.2015

Shri Roshan Lal s/o Shri Govind Ram, r/o Village Majhan, P.O. Raila, Sub Tehsil Sainj,
Distt. Kullu, H.P. *...Petitioner*

Versus

1. The Conservator of Forest, National Park Shamshi, Distt. Kullu, H.P.
2. The Divisional Forest Officer, Greater Himalayan National Park, Shamshi, Distt. Kullu, H.P. *...Respondents*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Sanjay Thakur, Adv.
For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Roshan Lal S/O Sh. Govind Ram, Village Majhan, P.O. Raila, Sub-Tehsil Sainj, Distt. Kullu, H.P. during March, 2009 by The Divisional Forest Officer, Greater Himalayan National Park, Shamshi, Distt. Kullu, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, salary, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. The case of the claimant/petitioner simplicitor is that he has been engaged as daily waged beldar by forest department in Jiwa range in Great Himalayan National Park in wild life range Jiwa Nala at Sainj District Kullu, H.P. in the year 2005 and ever since then he worked continuously till November, 2009 when his services were illegally terminated by verbal order of the respondent. The petitioner claims that his retrenchment from service was illegal and unlawful as respondent/department had disengaged him without following procedure envisaged under Section 25-H and 25-G of the Industrial Disputes Act. No notice was given to him besides the act and conduct of the respondent was highly discriminatory and against law. The petitioner in unambiguous terms claims to have completed 240 days however that his services had been dispensed with by an oral order. The grievance of the petitioner further remains that despite wages being not for the months of October and November, 2006, he had been assured by department time

and again for payment of wages but was denied whereupon he asked Range Office wild life Jiwa Nala to make payment whereupon he assured that his bill had been sent to Shamshi. On inquiry from the office of Conservator of Forest, Shamshi it was intimated that no bills had been sent by Range Office, Wildlife and thus petitioner claimant is entitled for wages of two months i.e. Rs.6000/-. It is further stated that petitioner had worked for all the 30 days whereas the record showed him to have worked 18 to 20 days in a month. Thus, fictional breaks had been given by respondent without following the procedure of Industrial Disputes Act. The petitioner/claimant is to be "workman" under Section 2(s) of the Industrial Disputes Act and governed by relevant provisions of the Industrial Disputes Act. Thus, petitioner alleging the break in service was given by the respondent and consequently termination of his service was stated to be in violation of natural justice which was in bad faith against law and procedure established under Section 25-H of the Industrial Disputes Act read with relevant other relevant provisions of the Industrial Disputes Act. Accordingly, prayer has been made that the respondent be directed to take back petitioner in service from the date of his initial appointment along-with continuity in service.

4. The respondents contested claim petition, filed joint reply inter alia taken preliminary objections of cause of action and petition being bad on account of delay and laches. On merits stated that initially petitioner was engaged seasonal casual labourer on daily wage basis with the respondent department in Wildlife Range Jiwanala w.e.f. January, 2007 to March, 2009 intermittently subject to availability of funds. It has been emphatically denied that petitioner had completed 240 days in a calendar year as required under law. It is further stated that respondent/department never disengaged the services of petitioner rather petitioner of his own had left the work at his own sweet will besides maintained that casual labourers being engaged by the department subject to availability of work and funds. It is specifically stated that petitioner had worked with the respondent/department intermittently from January, 2007 to April, 2009 and thus question of wages regarding for the months of October and November is not required to be paid by the respondent/department besides maintained wages for the months of October and November have already been paid to the petitioner for the period he worked with the respondent/department and left the work at his own. Accordingly, denying to have engaged any junior to the petitioner, claim petition is sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC and closed evidence. On the other hand, respondent examined RW1 Dr. Kirupasankar, the then Divisional Forest Officer, Great Himalayan National Park Shamshi, District Kullu, H.P. tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B copy of mandays chart of petitioner and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed by my Id. predecessor on 25.7.2014 for determination:

1. Whether termination of the services of the petitioner by the respondent during March, 2009 is illegal and unjustified as alleged? OPP
2. If issue no.1 is proved in affirmative, whether the petitioner is entitled for back wages, salary, seniority, past service benefits etc. as prayed for? OPP
3. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect? OPR

4. Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No

Issue No.2 : Discussed

Issue No.3 : No

Relief. : Claim petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. In order to prove plea of abandonment, respondents have examined RW1 who has deposed that petitioner himself had abandoned the job. There is nothing in record to remotely suggest that any notice was issued on petitioner for his willful or unauthorized absence. There is no documentary evidence on record to show that some correspondence had been made. It is thus uncorroborated testimony of petitioner which showed abandonment of job by petitioner. It is settled law that plea of abandonment has to be established by leading specific evidence. It is a question of fact to be determined by surrounding circumstances as has been held by Hon'ble High Court of H.P. in **2007 LHLJ 903**. Applying the ratio of judgment to facts of case in hand, plea of abandonment does not stand proved.

12. It is apt to mention here that petitioner has also failed to establish that he had factually worked for 240 days in preceding 12 months from the date of termination. A bare glance on the mandays chart Ex. RW1/B relied upon by the respondent reveal that petitioner had worked for 87 days in the year 2007, 191 days in 2008 and 54 days in 2009. The mandays chart does not show months and number of days in which the petitioner had worked. It is absolutely unclear from the mandays chart if petitioner had factually worked for 240 days as it is not clear in which all the months petitioner had worked in 2008 as similarly in 2008 although he shown to work for 191 days but it couldnot be stated that when he certainly worked several number of days in particular months. Stepping into witness box as PW1 petitioner has filed affidavit Ex. PW1/A under Order 18 Rule 4 CPC stipulating therein the detailed affidavit of claim petition but in cross-examination he claimed to have been engaged by the respondent/department in 2005. He has denied in crossexamination to have not worked for 240 days as required under law. No other witness had examined who had corroborated the version of the petitioner on the point of working of 240 days for the purpose of compliance of Section 25-F workman is to show that he has been in continuous service with the respondent employer for not less than one year. The workman is deemed to be in continuous service for period of one year if during the period of 12 calendar months preceding the date of termination a workman actually worked under the employer not less that 240 days by virtue of Section 25-B of the Industrial Disputes Act. The abovesaid observation clearly postulates working of claimant/petitioner for one year and that application of Section 25-B of the Act Even if the petitioner has not completed 240 days however he is entitled protection under Sections 25-G and 25-H of the Industrial Disputes Act. *Ld. Dy. D.A.* representing respondent State has contended that forestry work being seasonal in nature, the petitioner could not be stated to have been not provided that work or retrenched arbitrarily rather the petitioner is stated to be leaving the job of his

own. The abandonment could not be accepted as to proof of abandonment, the respondent had too not only prove issuance of legal notice or initiation of departmental inquiry but also that workman did not turn up for work despite all these formalities. It has been settled by several judgments of Hon'ble Supreme Court for seasonal work or temporary period a workman could not be stated to be retrenched in view of Section 2(oo) (bb) of the Industrial Disputes Act however in the normal course it is the decision of appropriate government. In the case in hand there is no decision of appropriate govt. for forestry being seasonal in nature and the same time there is no reliable evidence that petitioner had abandoned the job. As such, plea set up by the respondent is not established and despite to be concluded that respondent had retrenched the services of petitioner by verbal order which was illegal and unjustified as notice under section 25-F of the Act was not given. It is certainly not the case of petitioner that he was given time to time break and the reference received from State govt. nowhere stipulates legality and illegality of time to time termination and it is simply written about the termination. As such, this court is to confine findings on the point of termination of the services of the claimant/petitioner as noted above that petitioner had failed to prove by reliable evidence that he had actually worked for 240 days preceding his date of termination it would be unsafe to hold that without following procedure envisaged under the Industrial Disputes Act the services of the petitioner were dispensed with or retrenched by the respondent/department.

13. A microscopic examination of pleadings of the parties would reveal that petitioner had worked from January, 2007 to April, 2009. Para no.1 of the reply shows that petitioner had worked for January, 2007 to March, 2009 intermittently subject to availability of funds. If the petitioner had worked till March, 2009 per plea of respondent it was essentially required to be established by petitioner that his services had been terminated after he had completed 240 days in preceding year. But from mandays chart Ex. RW1/B no specific conclusion could be withdrawn with regard to specific period in year 2008 petitioner actually worked. It could not be stated that petitioner had worked for 240 days immediately prior to March, 2009 when his services were allegedly illegally terminated or retrenched. As such, the order of termination of the services of petitioner by the respondent during March, 2009 could not be stated to be illegal and unjustified and for similar reason petitioner is not entitled to salary/wages of two months as claimed by him. Accordingly, issue in hand is answered in negative in favour of the respondents and against the petitioner.

ISSUE NO. 3

14. Ld. Dy. D.A. representing respondent/department has contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on March, 2009 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any

material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of conciliation proceeding before authority under Act, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when his services were illegally terminated. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

RELIEF

15. As a sequel to my findings on foregoing issues, the instant claim petition is dismissed. In the peculiar circumstances of the case, the parties are left to bear their own costs.

16. The reference is answered in the aforesaid terms.

17. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

18. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of October, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 365/2014

Date of Institution : 16.12.2014

Date of decision : 31.10.2015

Shri Labh Singh s/o Shri Bhikham Ram, r/o Village Lakhnot, P.O. Makriri, Tehsil Joginder Nagar, District Mandi, H.P. *...Petitioner*

Versus

The Executive Engineer, B&R Division, HPPWD Joginder Nagar, Distt. Mandi, H.P. *...Respondent*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Labh Singh, S/O Shri Bhikham Ram, R/O Village Lakhnot, P.O. Makriri, Tehsil Joginder Nagar, District Mandi, H.P. during January 2001 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner was engaged as daily rated beldar by respondent w.e.f. 03.3.2000 in its National Highway Division, Joginder Nagar and later he (petitioner) worked with the respondent in the newly created HPPWD Division in 2004 but he was given fictional breaks from time to time from his initial engagement till 31.8.2007. It is alleged that he was issued muster rolls for 15 days in a month, though the work was available for the entire month but, his juniors namely Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishhori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal. were not given such breaks and they were allowed to complete 240 days in each calendar year and the above named juniors have now been regularized. It is alleged that the respondent has stopped giving fictional breaks to the petitioner from 01.9.2007 and thereafter, the petitioner has completed 240 days in each calendar year. Therefore, there has been violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for brevity). This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The petitioner thus has filed a demand notice with the labour department but matter could not be reconciled as the petitioner has prayed for giving him the benefit of seniority, regularization and back wages etc. 4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections of maintainability, petition being bad for non- joinder of necessary parties and claim petition being bad on account of delay and laches. On merits, it is claimed that petitioner had been engaged as daily rated beldar in HPPWD (NH) Division Joginder Nagar since March, 2001 and not in March, 2000 as alleged by petitioner. The allegation of giving fictional breaks up-to 31.8.2007 has been specifically denied. It is alleged that the work was made available to the petitioner as per the requirement and availability of the funds from time to time as per mandays chart annexure-RII and R-III and that all the workers in the annexure R-III were senior to the petitioner who have since been regularized. It is further alleged that the disengagement of the workmen on the availability of the funds and the work was strictly in accordance with the policy of ‘last come first go’ and thus allegation of violation of Section 25-F, 25-G and 25-H of the Industrial Disputes Act has been specifically denied. Thus, relying upon the plea of reference of regularization of petitioner, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by the petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri V.S. Guleria, the then Executive Engineer, HPPWD (B&R) Division, Joginder Nagar as RW1, tendered Ex. RW1/A copy of letter dated 9th December, 2003, Ex. RW1/B regarding creation of PWD Division (B&R)

Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D year-wise working days of daily wage Beldar and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 16.5.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the year January, 2001 to 31-08-2007 is/was illegal and unjustified as alleged? *OPP*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? *OPP*
3. Whether the claim petition is not maintainable in the present form as alleged? *OPR*
4. Whether the claim petition is bad for non-joinder of necessary parties as alleged? *OPR*
5. Whether the claim petition is bad on account of delay and laches on the part of the applicant as alleged? *OPR*

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes
 Issue No.2 : Discussed
 Issue No.3 : No
 Issue No.4 : No
 Issue No.5 : No

Relief: Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. March, 2001 is not in dispute. It is the admitted case of petitioner that he had worked since March, 2001 but he had been deliberately given fictional breaks by respondent so that he could not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own use to not come on his duty besides he willfully absented several times from it.

12. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent cannot be accepted that petitioner willfully absented from his duties as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties as absence from duty is serious misconduct, it is projected to be case as if petitioner came of his own and worked at his whims. The plea of petitioner, on the other hand remains that fictional breaks were deliberately given to him and that several other persons junior to petitioner namely Smt. Geeta Devi, Dalip Singh, Goutam Singh and Anil Kumar and others have been regularized by respondent who were actually not given fictional breaks at any point of time.

13. Perusal of mandays chart Ex. RW1/C would reveal that in the year 2001 petitioner had worked for 191 days, 245 days in 2002, 178 days in 2003, 170 days in 2004, 168 days in 2005, 168 days in 2006, 232 days in 2007, 364 days in 2008, 365 days in 2009, 362 days in 2010, 364 days in 2011, 361 days in 2012, 365 days in 2013 and 363 days in 2014. It can be noticed that in the several years petitioner has worked for less than 240 days, whereas for other remaining years he had worked for more than 240 days. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2002, 2003 and 2004 except at serial nos. 1, 7, 8 and 10 who had joined earlier to petitioner whereas petitioner had joined in 2001. Since respondent had not disputed to have engaged petitioner in March, 2001, he ought to have been regularized having continuously worked for about 6 years with requisite number of days required for regularization and on account of fictional break as stated above, which would show that other persons who had joined along-with him have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement but fictional breaks in no manner would affect or eclipse legitimate right of regularization in service of petitioner. However, petitioner has admitted in cross-examination that he had agricultural land and remained employed and as such it could not be stated with certainty that petitioner was not gainfully employed during the period of fictional breaks.

14. Stepping into the witness box as PW1, petitioner has sworn in detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 2001 to 2007 by giving fictional break whereas the persons junior to petitioner have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year as they had been invariably issued muster roll for whole of month in these years. In cross-examination, petitioner has admitted that he has been regularly provided with more than 240 days of work after 2007 which means the dispute is only for the years 2001 to 2007 as stated in the affidavit. It needs to be noticed that other co-workers working with petitioner or say who were junior were given muster roll for full month so that they completed 240 days in a year. RW1 Shri V.S. Guleria has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers who have been shown in the said seniority list were employed after the engagement of the petitioner except serial nos. 1, 7, 8 and 10. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 2001 who had not been issued any appointment letter but denied that petitioner had been deliberately given breaks in the years from 2001 to 2007 but he could not plead so as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty, any notice was issued for unauthorized absence and the version of RW1 that petitioner came and worked & go of his own

from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. Since absence from duty is serious misconduct, and there being nothing on record to show initiation of proceeding, plea set forth by respondent qua abandonment of job by petitioner intermittently merits rejection. As such, the plea of fictional break given to the petitioner from the year 2001 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well. Although, petitioner being in employment at the time of passing of award, being given fictional breaks as stated above is duly established but petitioner cannot be deprived of his legitimate right to seek seniority as well as continuity in service from his date of joining along-with other persons working with him. Thus, petitioner could not have been discriminated arbitrarily who has certainly been discriminated as stated in foregoing paras. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent during 2001 to 2007 was certainly illegal and unjustified which is manifestly in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** in the circumstances of the case. Issues are accordingly decided in part in favour of the petitioner and against the respondent.

ISSUE NO. 3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO. 4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case in claim petition as petitioner was initially appointed with respndent only PW1 has admitted in cross-examination that petitioner was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 5

17. Id. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 2001 to 2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, he come to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Id. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by Id. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional**

Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, petitioner is held to be in continuous uninterrupted service with the respondent from the date of his initial engagement, the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 31st day of October, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 382/2014

Date of Institution : 16.12.2014

Date of decision : 31.10.2015

Smt. Kamla Devi w/o Shri Rajender Singh, r/o Village Salaghar, P.O. Basona, Tehsil
Joginder Nagar, District Mandi, H.P. *...Petitioner*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P.
...Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Smt. Kamla Devi, W/O Shri Rajender Singh, R/O Village Salaghar, P.O. Basona, Tehsil Joginder Nagar, District Mandi, H.P. during year 2002 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed her statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner was engaged as daily rated beldar by respondent w.e.f. 06.02.2002 in its National Highway Division, Joginder Nagar and later she (petitioner) worked with the respondent in the newly created HPPWD Division in 2004 but she was given fictional breaks from time to time from her initial engagement till 31.8.2007. It is alleged that she was issued muster rolls for 15 days in a month, though the work was available for the entire month but, her juniors namely Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishhori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal. were not given

such breaks and they were allowed to complete 240 days in each calendar year and the above named juniors have now been regularized. It is alleged that the respondent has stopped giving fictional breaks to the petitioner from 01.9.2007 and thereafter, the petitioner has completed 240 days in each calendar year. Therefore, there has been violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for brevity). This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The petitioner thus has filed a demand notice with the labour department but matter could not be reconciled as the petitioner has prayed for giving her the benefit of seniority, regularization and back wages etc.

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections of maintainability, petition being bad for non- joinder of necessary parties and claim petition being bad on account of delay and laches. On merits, engagement of the petitioner from January, 2002 is admitted. The allegation of giving fictional breaks up-to 31.8.2007 has been specifically denied. It is alleged that the work was made available to the petitioner as per the requirement and availability of the funds from time to time as per mandays chart annexure-RII and R-III and that all the workers in the annexure R-III were senior to the petitioner who have since been regularized. It is further alleged that the disengagement of the workmen on the availability of the funds and the work was strictly in accordance with the policy of 'last come first go' and thus allegation of violation of Section 25-F, 25-G and 25-H of the Industrial Disputes Act has been specifically denied. Thus, relying upon the plea of reference of regularization of petitioner, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by the petitioner.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/ A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri V.S. Guleria, the then Executive Engineer, HPPWD (B&R) Division, Joginder Nagar as RW1, tendered Ex. RW1/A copy of letter dated 9th December, 2003, Ex. RW1/B regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D year-wise working days of daily wage Beldar and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 16.5.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the year January, 2002 to 31-08-2007 is/was illegal and unjustified as alleged? OPP
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? OPP
3. Whether the claim petition is not maintainable in the present form as alleged? OPR
4. Whether the claim petition is bad for non-joinder of necessary parties as alleged? OPR

5. Whether the petition is bad on account of delay and laches on the part of the applicant as alleged. OPR

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes
 Issue No.2 : Discussed
 Issue No.3 : No
 Issue No.4 : No
 Issue No.5 : No

Relief: Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. January, 2002 is not in dispute. It is the admitted case of petitioner that she had worked since January, 2002 but she had been deliberately given fictional breaks by respondent so that she could not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as she of her own use to not come on her duty besides she willfully absented several times from it.

12. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent cannot be accepted that petitioner willfully absented from her duties as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for her unauthorized absence from her duties as absence from duty is serious misconduct, it is projected to be case as if petitioner came of her own and worked at her whims. The plea of petitioner, on the other hand remains that fictional breaks were deliberately given to her and that several other persons junior to petitioner namely Smt. Geeta Devi, Dalip Singh, Goutam Singh and Anil Kumar and others have been regularized by respondent who were actually not given fictional breaks at any point of time.

13. Perusal of mandays chart Ex. RW1/C would reveal that in the year 2002 petitioner had worked for 148 days, 171 days in 2003, 170 days in 2004, 171 days in 2005, 169 days in 2006, 231 days in 2007, 362 days in 2008, 355 days in 2009, 333 days in 2010, 353 days in 2011, 347 days in 2012 and 360 days in 2013. It can be noticed that in the several years petitioner has worked for less than 240 days, whereas for other remaining years she had worked for more than 240 days. Thus, break in service being within a period of nine years from her termination was definitely a fictional break as in remaining years she had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record

in which all the persons named above are shown to have joined in the years 2002, 2003 and 2004 except at serial nos. 3,6,7 & 10 who had joined earlier to petitioner whereas petitioner had joined in 2002. Since respondent had not disputed to have engaged petitioner in 2002, she ought to have been regularized having continuously worked for about 8 years with requisite number of days required for regularization and there being no fictional break as stated above, which would show that other persons who had joined along-with her have been regularized but the petitioner has been deprived of her legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming her seniority and continuity in service from her initial engagement but fictional breaks in no manner would affect or eclipse legitimate right of regularization in service of petitioner. However, petitioner has admitted in cross-examination that she had agricultural land and remained employed and as such it could not be stated that certainty that petitioner was not gainfully employed during the period of fictional breaks.

14. Stepping into the witness box as PW1, petitioner has sworn in detailed affidavit under Order 18 Rule 4 CPC stipulating therein that she had been engaged and disengaged between 2002 to 2007 by giving fictional break whereas the persons junior to petitioner have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year as they had been invariably issued muster roll for whole of month in these years. In cross-examination, petitioner has admitted that she has been regularly provided with more than 240 days of work after 2007 which means the dispute is only for the years 2002 to 2007 as stated in the affidavit. It needs to be noticed that other co-workers working with petitioner or say who were junior were given muster roll for full month so that they completed 240 days in a year. RW1 Shri V.S. Guleria has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers who have been shown in the said seniority list were employed after the engagement of the petitioner except serial no. 3,6,7 & 10. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 2002 who had not been issued any appointment letter but denied that petitioner had been deliberately given breaks in the years from 2002 to 2007 but he could not plead so as no corresponding record has been produced by the respondent to establish that on absence of petitioner from her duty, any notice was issued for unauthorized absence and the version of RW1 that petitioner came and worked & go of her own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for her absence from duty at any point of time. Since absence from duty is serious misconduct, and there being nothing on record to show initiation of proceeding, plea set forth by respondent qua abandonment of job by petitioner intermittently merits rejection. As such, the plea of fictional break given to the petitioner from the year 2002 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well. Although, petitioner being in employment at the time of passing of award, being given fictional breaks as stated above is duly established but petitioner cannot be deprived of her legitimate right to seek seniority as well as continuity in service from her date of joining along-with other persons working with him. Thus, petitioner could not have been discriminated arbitrarily who has certainly been discriminated as stated in foregoing paras. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent during 2002 to 2007 was certainly illegal and unjustified which manifestly in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, she is to be given benefit of seniority and continuity in service **except back wages** in the circumstances of the case. Issues are accordingly decided in part in favour of the petitioner and against the respondent.

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO. 4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case in claim petition as petitioner was initially appointed with respndent only PW1 has admitted in cross-examination that petitioner was working with respondent although she earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 5

17. Ld. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 2002 to 31.8.2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, she come to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by Id. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be

open to the Court to introduce the limitation on the ground of fairness and justice. **In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, it is held that the petitioner is held to be in continuous uninterrupted service with the respondent from the date of her initial engagement, the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and her seniority shall be reckoned from her initial date of engagement. Accordingly, claim petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. She shall, however, be considered for regularization by respondent at the time when her juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 31st day of October, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 292/2014

Date of Institution : 18.09.2014

Date of decision : 31.10.2015

Smt. Satya Devi w/o Shri Balwant Singh, r/o Village Balhi, P.O. Drahal, Tehsil Joginder Nagar, District Mandi, H.P. ...Petitioner

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P. ...Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Smt. Satya Devi, W/O Shri Balwant Singh, R/O Village Balhi, P.O. Drahal, Tehsil Joginder Nagar, District Mandi, H.P. during February 1999 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner had filed statement of claim before this court.

3. Brief facts as set up in the claim petition reveal that the services of petitioner were engaged by the B&R Department as a daily wager on muster roll basis w.e.f. February, 1999 who worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar but no appointment order/letter was issued in her name by the respondent. Averments made in claim petition further stipulates that the latter used to engage petitioner's for 15 to 20 days every month instead of the full month and that fictional breaks for 10-15 days in each month were continued to be given by the respondent till 30.09.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, her services were continuously engaged by the respondent. It is alleged that the respondent had given petitioner artificial breaks from the year 1999 to 30.09.2007. Not only this, the persons who were working with her (petitioner) or joined the service after her were not given any break by the respondent deliberately. At the time while giving artificial/fictional breaks, the principle of 'last come first go' was also not followed by the respondent and the persons junior to petitioner namely Shri Rajinder Singh and Sh. Sumer Singh and others worked with the respondent/department without any break and that the period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of petitioner's services. It is alleged that the persons junior to petitioner have been regularized by the respondent earlier to her contrary to the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per

Award dated 28.11.2011 and thus petitioner having completed eight years of continuous service on 31.12.2008 and 10 years of continuous service on 31.12.2010 was liable to be regularized as work charged beldar as per the policy framed/approved in Mool Raj Upadhaya's case i.e. w.e.f. 1st January, 2009 in the pay scale of Rs.4900-10680/- with all other perks and allowances. It is also contended that petitioner is still working with the respondent/department. The act and conduct of the respondent is also alleged to be unfair labour practice which also violates Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections qua non-maintainability as no legal or fundamental right of the petitioner has been infringed, the petition being hit by the vice of delay and laches and bad for not impleading the State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar as parties to the petition. On merits, engagement of the services of the petitioner from March, 1999 is admitted. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar and that respondent's office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004 and after the creation of her (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. It has been emphatically denied that if fictional breaks were given to the petitioner at any point of time rather the services of the petitioner were engaged as per the availability of the work and funds. As and when the services of the petitioner were engaged in accordance with her verbal requests from time to time, she was duly made aware regarding the availability of the work besides maintained that no continuous work for the entire month was provided to the petitioner who used to report for duty intermittently as per her convenience. The workmen whose names have been disclosed by the petitioner, worked in continuity and that their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is stated to be not applicable to the present case as in that case, one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. It is further asserted that the services of the petitioner would be regularized as per the policy of the State besides denied to have indulged in any unfair labour practice and maintained that no provision of the Act has been violated. Accordingly, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by petitioner.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of letter dated 14th September, 2007 of Pr. Secretary (PW) to The Engineer-in-Chief and others regarding providing of muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks, Ex. PW1/C copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri V.S. Guleria, the then Executive Engineer, HPPWD (B&R) Division Joginder Nagar as RW1, tendered Ex. RW1/A notification dated 9th December, 2003, Ex. RW1/B copy of letter dated 2.1.2004 regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D year-wise working days of daily wage Beldar and closed the evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 02.4.2015 for determination:

1. Whether time to time termination of the services of the petitioner by the respondent during the years February, 1999 to 31st August, 2007 is/was improper and unjustified as alleged? *OPP*
2. If issue no.1 is proved in affirmative, to what services benefits the petitioner is entitled to? *OPP*
3. Whether the claim petition is not maintainable in the present form as alleged? *OPR*
4. Whether the claim petition is bad for non-joinder of the necessary parties as alleged? *OPR*
5. Whether the claim petition is bad on account of delay and laches on part of the petitioner as alleged. If so, its effect? *OPR*
6. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes
 Issue No.2 : Discussed
 Issue No.3 : No
 Issue No.4 : No
 Issue No.5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. February, 1999 is not in dispute. It is the admitted case of petitioner that petitioner had worked since February, 1999 but she had been deliberately given fictional breaks by respondent so that petitioner did not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as she of her own, used to not come on her duty besides she willfully absented several times from her duty. To appreciate the genuineness of the plea so raised by

respondent, suffice would be to state here that bald assertion of the respondent that petitioner willfully absented from her duties is devoid of merit as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for her unauthorized absence from her duties. Rather, it is projected to be case as if petitioner came of her own for work and left the work of her own sweet will. The plea of petitioner, on the other hand remains that fictional breaks were given to her and that several persons junior to her namely Smt. Guddi Devi, Sh. Prithi Chand, Sh. Ravinder Kumar, Sh. Dalip Singh, Sh. Gautam Ram, Sh. Bhawani Singh and Sh. Ram Dhan have been regularized by respondent and these persons were actually not given fictional breaks at any point of time.

12. A bare glance on mandays chart Ex. RW1/C would reveal that in the year 1999 petitioner had worked for 146 days, 196 days in 2000, 187 days in 2001, 170 days in 2002, 178 days in 2003, 168 days in 2004, 169 days in 2005, 163.5 days in 2006, 231 days in 2007, 357.5 days in 2008, 361 days in 2009, 363 days in 2010, 363 days in 2011 and 91 days in 2012. It can be noticed that till 2007 petitioner has worked for less than 240 days whereas for other remaining years she had worked for more than 240 days. It may be pertinent to state here that vide letter dated 14.9.2007 Ex. PW1/B direction has been given by government to provide muster roll to all labourers who have been engaged for 15/20 days or 30 days be provided muster roll for full month in certain situation but this instruction appears to be have been completely ignored by respondent department as claimant petitioner was engaged in 1999 much prior to year 2006 and had not completed 10 years who was to be issued muster roll for full month in relaxation of policy as special case. Thus, break in service being within a period of nine years from her termination was definitely a fictional break as in remaining years she had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2001, 2002 and 2003 except at serial nos. 1 to 3 who had joined earlier to petitioner as workmen at serial nos.5 to 11 joined in the years July, 2000, October, 2001, December, 2001, July, 2002, April, 2002, November, 2011 and February, 2003 whereas petitioner had joined in February, 1999. Since respondent had not disputed to have engaged petitioner in February, 1999, she ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and on account of fictional break as stated above, which would show that other persons who had joined along-with her have been regularized but the petitioner has been deprived of her legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming her seniority and continuity in service from her initial engagement and thus fictional breaks in no manner would affect or eclipse her legitimate right of regularization in service.

13. Stepping into the witness box as PW1, petitioner has sworn detailed affidavit under Order 18 Rule 4 CPC stipulating therein that she had been engaged and disengaged between 1999 to 2007 by giving fictional break whereas the persons junior to her have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year. In cross-examination, she has admitted that she has been provided work more than 240 days of work after September, 2007 which means the dispute is only for the years 2001 to 2007 as stated in the affidavit. RW1 Shri V.S. Guleria has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers shown in the said seniority list were employed after the engagement of the petitioner. She has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. She has admitted that petitioner has been engaged in the year 2001 who had not been issued any appointment letter. she has denied that petitioner had been deliberately given breaks in the years from February, 1999 to 2007 but she could not prove as no corresponding record has been produced by the respondent to establish that

on absence of petitioner from her duty any notice was issued for unauthorized absence and the version of RW1 that she came and go of her own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for her absence from duty at any point of time. As such, the plea of fictional break given to the petitioner from the year 1999 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well.

14. Although petitioner being in employment at the time of giving fictional breaks as stated above is duly established yet she cannot be deprived of her legitimate right to seek seniority as well as continuity in service from her date of joining along-with other persons working with her besides petitioner could not have been discriminated arbitrarily between similarly situated workmen. It would be pertinent to mention here that Guddi Devi w/o Himel Chand who joined in July, 2000 as per Ex. RW1/D has been regularized but she was not given any fictional break in 2000 to 2003 which further establishes arbitrary manner of working of respondent in the matter of giving fictional break. No reason whatsoever has been assigned by respondent for not giving any fictional breaks to others which further shows that plea of non availability of work or the funds as the case may be was not correct stand of respondent made with the object to defeat the claim of petitioner. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent from 1999 to 2007 was certainly illegal and unjustified in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, she is to be given benefit of seniority and continuity in service **except back wages** particularly when she has admitted to have remained gainfully employed while working as an agriculturist. Issue in question is thus as stated above decided in part in favour of the petitioner and against the respondent.

ISSUE NO. 3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of her own and did not join her duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case. Claim petition as petitioner was initially appointed with respondent only PW1 has admitted in cross-examination that she was working with respondent although she earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 5

17. Id. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 1999 to 31.8.2007 which was not within knowledge of petitioner. It

seems that when workmen junior to petitioner had been regularized, she come to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by Id. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, petitioner is held to be in continuous, uninterrupted service with the respondent from the date of her initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and her seniority shall be reckoned from her initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. She shall, however, be considered

for regularization by respondent at the time when her juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 31st day of October, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

Himachal Pradesh Wakf Board Elgin Villa, Lakkar Bazar, Shimla

NOTIFICATION

Shimla, the 16th October, 2015

No.HPWB/BOD/78/Vol.III/.— In exercise of the powers conferred under section 27 of the Waqf Act, 1995, the following powers has been delegated by the Board vide item no. 5 in its meeting held on 30.07.2015 to all the Estate Officers, HP Wakf Board with immediate effect:--

“To issue preliminary notice to the encroachers”

By order,
(YUNUS) IAS,
Chief Executive Officer,
HP Wakf Board, Shimla.